

EXHIBIT A

to the Declaration of
Lisa J. Cisneros in Support of
Plaintiffs' Opposition Briefs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

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VIDEO DEPOSITION OF BRUCE CHIZEN

MARCH 15, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

09:25:09 1 given up the CEO and president's jobs.

09:25:12 2 A. That's correct.

09:25:20 3 Q. So after May of 2008, did you -- did you or
09:25:24 4 have you done any work for Adobe?

09:25:26 5 A. No.

09:25:34 6 Q. How long did you work for Bill Campbell?

09:25:36 7 A. I worked for Mr. Campbell from -- are you
09:25:41 8 asking directly or within his organization?

09:25:44 9 Q. Well, I -- fair enough.

09:25:47 10 How -- where -- at what company did you and
09:25:52 11 Mr. Campbell work together?

09:25:53 12 A. Claris Corporation.

09:25:55 13 Q. And at that time was Mr. Campbell CEO of the
09:25:58 14 company?

09:25:58 15 A. Yes.

09:25:58 16 Q. And how long did you work for Claris?

09:26:00 17 A. From -- these are approximate dates.

09:26:04 18 Q. Right.

09:26:04 19 A. The fall of 1987 until 19- -- until February of
09:26:13 20 1994. I believe Mr. Campbell left either 1990 or '91.
09:26:19 21 So it would have been three to four years.

09:26:21 22 Q. And was there a point in time when you worked
09:26:23 23 directly for Mr. Campbell?

09:26:25 24 A. There was a short period of time prior to him
09:26:27 25 leaving where I worked directly for Mr. Campbell.

09:26:30 1 Q. Do you still see Bill Campbell?

09:26:32 2 A. I still stay in touch with Mr. Campbell.

09:26:35 3 Q. Would you say he's a friend of yours?

09:26:40 4 A. It's -- it's hard to define the word "friend."

09:26:45 5 He's somebody I respect. He's somebody who has helped

09:26:49 6 build my career. He has been a great mentor and I try to

09:26:53 7 stay in touch with him. Do I celebrate birthdays with

09:26:56 8 him? Typically not. Do I go on vacation with him and

09:27:00 9 his partner? No. Do I go out with, do I see him 10

09:27:07 10 times or 12 times a year? No.

09:27:09 11 So, you know, it all depends on definition of

09:27:12 12 "friend." But do I see him once or twice a year? Yes.

09:27:18 13 Do I have an occasion drink with him? Yes. Well, there

09:27:23 14 would be a quick email exchange on some -- some business

09:27:26 15 issue. Yes.

09:27:28 16 Q. Were you in more regular contact with

09:27:30 17 Mr. Campbell when you were working for Adobe?

09:27:38 18 A. Perhaps, but I'm not sure. It was never to the

09:27:41 19 degree in which I just defined "friend," 10, 12 times a

09:27:47 20 year and all that.

09:27:49 21 Q. Did -- so you came to Adobe as part of the

09:28:29 22 acquisition or merger between Adobe and Aldus?

09:28:33 23 A. Aldus, yes.

09:28:35 24 Q. Okay. And when you became the CEO in 2000, did

09:28:42 25 you take that job over from Mr. Warnock?

09:28:46 1 A. From Dr. Warnock, yes.

09:28:49 2 Q. And, again, just so we're clear, when we're

09:28:53 3 saying Dr. Warnock, we're referring to John Warnock?

09:28:58 4 A. Yes.

09:28:58 5 Q. Who was one of the founders of the company?

09:29:00 6 A. Yes.

09:29:06 7 Q. When you took over as CEO, what was

09:29:08 8 Mr. Geschke's job?

09:29:11 9 A. He had retired.

09:29:12 10 Q. Okay.

09:29:13 11 A. And he was co-chair of the board.

09:29:16 12 Q. And when you took over the CEO job --

09:29:19 13 A. Let me restate that. He -- there were two

09:29:21 14 chairs. I used the title co-chair. He was chair.

09:29:26 15 Q. So when you took over as the CEO, Mr. Geschke

09:29:29 16 and Dr. Warnock were the co-chairs of the Adobe board?

09:29:32 17 A. They were the chairs of the Adobe board,

09:29:35 18 technically.

09:29:36 19 Q. Did they continue to serve in that role or job

09:29:38 20 throughout the entirety of the period of time that you

09:29:40 21 were the CEO of Adobe?

09:29:42 22 A. Yes.

09:30:12 23 MR. SAVERI: I need some exhibit tabs.

09:30:14 24 (Exhibit 1800 was marked for identification.)

25 //

09:52:56 1 I do remember focusing on the two objectives I
09:53:02 2 had in mind, which I suspect at that time was making sure
09:53:07 3 that I didn't confuse the customer at the same time I
09:53:10 4 made sure that the Department of Justice got the right
09:53:13 5 message.

09:53:14 6 BY MR. SAVERI:

09:53:14 7 Q. Now, did you believe, though, at the time that
09:53:25 8 Apple and Adobe were competitors?

09:53:36 9 A. In 2005 we were more collaborators than we were
09:53:45 10 competitors. We competed in niche areas of our product
09:53:51 11 lines. I always believed that Apple could potentially be
09:53:58 12 a very big threat to Adobe, either by alienating us, not
09:54:07 13 giving us what we needed to optimize our products for
09:54:10 14 their architecture, their software, their hardware; or
09:54:15 15 competing aggressively against us. I always believed
09:54:18 16 that and was always concerned about that.

09:54:20 17 If you looked at the facts at the time, I
09:54:23 18 believe the areas in which we competed were few -- few
09:54:28 19 areas and not really material.

09:54:30 20 However, because we were undergoing the
09:54:34 21 discovery of the Department of Justice, I wanted to make
09:54:37 22 sure they understood not only the potential threat that
09:54:40 23 Apple would -- could be, but also the areas in which they
09:54:44 24 were already a threat even though they were relatively
09:54:49 25 immaterial, I believe, at the time.

09:54:50 1 Q. Well, so I -- I guess I'm trying to -- to focus
09:54:54 2 in and get your best recollection.

09:54:59 3 At the time -- well --

09:55:01 4 A. And -- and I'll add, if you go back and look at
09:55:04 5 our SEC filings at the time, we always talked about Apple
09:55:09 6 and the point -- some of the point products being
09:55:11 7 competitive.

09:55:12 8 Q. So is it fair to say that at -- well, let me
09:55:16 9 just ask the question.

09:55:17 10 This article -- this interview was given in
09:55:19 11 about -- in April of 2005.

09:55:21 12 A. That's right before we received approval from
09:55:24 13 the Department of Justice.

09:55:26 14 Q. Was there friction in the Apple/Adobe
09:55:30 15 relationship at that time?

09:55:31 16 A. There was always -- for as long as I was CEO,
09:55:35 17 there was always friction between Apple and Adobe.

09:55:40 18 Q. Were you the CEO when Warnock and Jobs and Bill
09:55:51 19 Gates were all on the stage together at the Seybold
09:55:55 20 conference?

09:55:56 21 A. I was not at Aldus or Adobe. I was not with
09:56:02 22 the company at that point in time.

09:56:03 23 Q. Do you remember that event?

09:56:04 24 A. No.

09:56:06 25 Q. Now, at this time, and by "this time," April

09:56:11 1 2005, did you view Microsoft as a competitor of Adobe?

09:56:16 2 A. Yes.

09:56:17 3 Q. And --

09:56:18 4 A. As well as a partner.

09:56:24 5 Q. Okay. Did -- in -- in what way was Microsoft a
09:56:30 6 competitor at this time?

09:56:35 7 A. They -- I'm not sure of the time frame, but
09:56:42 8 they were competing around that time frame aggressively
09:56:48 9 in a digital imaging space against products in the
09:56:54 10 category of Adobe Photoshop, which was a major revenue
09:57:00 11 contributor.

09:57:01 12 They were also working on ways to undermine our
09:57:05 13 Acrobat business and our PDF franchise, which was a
09:57:12 14 significant revenue contributor to Adobe.

09:57:17 15 And there were a number of other areas.

09:57:20 16 They were much more of a competitor than
09:57:25 17 somebody like Apple. At the same time, we needed to
09:57:30 18 collaborate with them because we wanted to optimize our
09:57:33 19 software for their operating system, for Microsoft
09:57:36 20 Windows.

09:57:40 21 Q. Well, in 2005, at this time in 2005, did Adobe
09:57:47 22 and Microsoft collaborate on a number of products?

09:57:54 23 A. I'm -- I would assume so, because we had no
09:57:58 24 choice, since our products worked on Microsoft Windows.

09:58:02 25 Also somewhere around that time frame I was

10:53:46 1 Q. Did you trust him personally?

10:53:56 2 A. In regards to what?

10:53:58 3 Q. Well, when did you first meet Steve Jobs?

10:54:03 4 A. My first interaction with Steve Jobs is when he

10:54:07 5 first came back to Apple, and I was still -- I was off

10:54:12 6 running the graphics business, so it must have been in

10:54:16 7 mid-19 -- late '90s.

10:54:19 8 Q. So when you first met Jobs, were you working

10:54:21 9 for Adobe?

10:54:22 10 A. I was working for Adobe, yes.

10:54:24 11 Q. And when you first met Mr. Jobs, was Mr. Jobs

10:54:27 12 working for Apple?

10:54:28 13 A. Yeah. Let me -- let me correct one thing. I

10:54:30 14 worked at Microsoft in the years of 1983 to 1987, and I

10:54:35 15 might have had an interaction with Mr. Jobs. But I

10:54:38 16 certainly don't remember it specifically, and he

10:54:41 17 certainly wouldn't have remembered me.

10:54:44 18 Q. So the first time you -- you remember meeting

10:54:48 19 Mr. Jobs was at a time that you were at Adobe.

10:54:50 20 A. Yes.

10:54:51 21 Q. And Mr. Jobs was --

10:54:53 22 A. Again, I -- I -- I was -- somewhere between

10:54:56 23 1983 and 1987 I was at a press conference with Mr. Gates

10:55:00 24 and Mr. Jobs, and somebody might have introduced me to

10:55:03 25 Mr. Jobs, but I don't specifically -- but I did see him

10:55:06 1 and I was in the same room with him.

10:55:08 2 Q. And I was just trying to figure out, I think
10:55:10 3 you said that you -- when you first met Mr. Jobs in kind
10:55:14 4 of a significant way you were working at Adobe?

10:55:16 5 A. Yes.

10:55:17 6 Q. And he had returned to Apple.

10:55:18 7 A. Yes.

10:55:19 8 Q. So had he -- was Bill Amelio still running
10:55:23 9 Apple, or had he left?

10:55:25 10 A. He had left.

10:55:26 11 Q. So that just kind of helps me place it.

10:55:30 12 How many -- from that point in time did you
10:55:34 13 regularly communicate with Steve Jobs?

10:55:36 14 A. No. My communication with Steve Jobs didn't
10:55:39 15 start occurring until Dr. Geschke resigned as president,
10:55:43 16 which was approximately 2000.

10:55:46 17 Q. From that point forward, though, did you speak
10:55:48 18 or communicate with Mr. Jobs on a regular basis?

10:55:51 19 A. Yes, more so when I took over as CEO in later
10:55:54 20 2000.

10:55:55 21 Q. Did you like him?

10:55:58 22 A. I respected him.

10:55:59 23 Q. Okay. Did you like him?

10:56:03 24 A. It didn't make a difference.

10:56:07 25 Q. Did you think he was a tough businessman?

10:56:11 1 A. Absolutely.

10:56:12 2 Q. Did you think he was ruthless?

10:56:14 3 A. Absolutely.

10:56:16 4 Q. Do you think he was honest when he spoke to

10:56:18 5 you?

10:56:35 6 A. Sometimes.

10:56:36 7 Q. Sometimes not?

10:56:37 8 A. Sometimes not.

10:57:04 9 Q. Did you ever talk to Dr. Warnock about Steve

10:57:07 10 Jobs?

10:57:08 11 A. Yes.

10:57:09 12 Q. Did Dr. Warnock share your views of Mr. Jobs?

10:57:17 13 Do you know?

10:57:21 14 A. I don't think so.

10:57:23 15 Q. Okay. In what way? How were they -- excuse

10:57:26 16 me. Let me ask a better question.

10:57:28 17 How were Dr. Warnock's views of Steve Jobs

10:57:33 18 different than yours?

10:57:34 19 MR. MITTELSTAEDT: Objection to form.

10:57:35 20 THE WITNESS: I can't -- I don't want to -- am

10:57:36 21 unable to tell you how Dr. Warnock thinks about Steve

10:57:42 22 Jobs. I think Dr. Warnock is in the best position to do

10:57:45 23 that.

10:57:45 24 MR. SAVERI: Fair enough.

10:57:46 25 Q. Did he ever tell you he thought Steve Jobs was

11:16:29 1 that he was displeased?

11:16:31 2 A. Yes.

11:16:42 3 Q. Did you understand that at some point in time
11:16:43 4 Steve Jobs came to believe that Adobe was not a partner
11:16:46 5 of Apple's?

11:16:48 6 MR. MITTELSTAEDT: Object to form.

11:16:49 7 THE WITNESS: I don't know what Steve believed
11:16:51 8 or didn't believe.

11:16:52 9 BY MR. SAVERI:

11:16:53 10 Q. Did he ever express that to you? That is that
11:16:56 11 he had come to the conclusion that Adobe was no longer a
11:17:01 12 partner of --

11:17:02 13 A. No.

11:17:03 14 Q. -- of Apple's?

11:17:04 15 A. Not that I recall, no.

11:17:17 16 Q. Can you recall or identify a decision that you
11:17:19 17 made as CEO of Adobe that caused the most friction
11:17:24 18 between the two companies?

11:17:27 19 A. I can recall a number of decisions I made. I
11:17:29 20 don't know which one was the most decisive.

11:17:34 21 Q. Can you describe those for me, please.

11:17:36 22 A. One was the decision to optimize for OS X
11:17:47 23 around our product LiveCycle, so in conjunction with
11:17:54 24 product feature additions, as opposed to just doing OS X
11:17:59 25 only --

11:17:59 1 Q. Right.

11:17:59 2 A. -- additions. Steve was not happy with that.

11:18:10 3 Steve showed me some prototypes of a Macintosh
11:18:15 4 computer on the Intel architecture before they were
11:18:19 5 publicly announced, and we had just gotten done
11:18:23 6 completing our OS X initiatives, which were painful and
11:18:27 7 hard, and it would have been a lot of work to now port
11:18:30 8 them to an Intel architecture, and I told him that, and
11:18:33 9 he didn't like that.

11:18:35 10 Q. Okay.

11:18:36 11 A. Those are two examples of things that he didn't
11:18:38 12 like. He didn't like that the products on Windows looked
11:18:45 13 and felt like the products on Macintosh, thereby not
11:18:52 14 differentiating the two platforms, which was upsetting to
11:18:56 15 him.

11:18:57 16 Q. Anything else that you would identify as
11:18:59 17 particular decisions that you made that --

11:19:02 18 A. There would be product features that we
11:19:04 19 weren't -- I don't recall which one, because the list
11:19:07 20 would go on and on -- that we were implementing that
11:19:11 21 didn't take full advantage of the unique capabilities of
11:19:16 22 his hardware and software.

11:19:26 23 Q. When -- when Steve Jobs was displeased with any
11:19:31 24 of these decisions that you made, how did he express that
11:19:33 25 to you?

11:19:36 1 A. It's hard for me to tell whether he expressed
11:19:39 2 all his displeasure on each of my decisions, but many of
11:19:43 3 his -- many of the decisions that I made he would
11:19:47 4 typically pick up the phone and start screaming at me.

11:19:51 5 Q. Okay. So he had -- he had your cell phone
11:19:55 6 number?

11:19:55 7 A. He probably had my cell phone number. He
11:19:58 8 definitely had my home number. And he had my office
11:20:01 9 number.

11:20:01 10 Q. So he would call you from time to time and
11:20:04 11 express his displeasure in -- in no uncertain terms; is
11:20:08 12 that fair?

11:20:09 13 A. That is very fair.

11:20:10 14 Q. Would he also -- did he also send you emails,
11:20:12 15 too, sometimes?

11:20:18 16 A. On the bigger issues he typically picked up on
11:20:21 17 the phone. On the ones that were just slightly annoying,
11:20:24 18 he'd send me an email. He was much more effective on the
11:20:29 19 phone.

11:20:35 20 Q. During the time that you were CEO, do you think
11:20:38 21 that the relationship between the two companies, that is
11:20:40 22 Adobe and Apple, got worse?

11:20:42 23 A. Yes.

11:20:42 24 Q. Were there particular points in time or
11:20:44 25 milestones in that arc where you -- where you think the

11:20:51 1 relationship did get significantly worse?

11:20:55 2 A. Yeah, again, I'm recalling, so I -- you know,
11:21:00 3 my timetables could be off. I might miss some events.

11:21:06 4 Certainly when he introduced -- again, I think
11:21:09 5 it was Final Cut, which was the video editing solution,
11:21:13 6 he had purchased that solution from Macromedia, this is
11:21:17 7 way before we acquired them, and he told me that he was
11:21:19 8 purchasing it at the time to go into the consumer market,
11:21:24 9 and he ended up going into the professional market.

11:21:27 10 Q. Right.

11:21:27 11 A. So that -- that was a disturbing situation, and
11:21:33 12 we discussed it, and he said, yeah, we had to change our
11:21:37 13 direction because of a whole bunch of reasons, which I
11:21:41 14 clearly understood. That doesn't mean I liked it.

11:21:47 15 The not getting to OS X as quickly as he wanted
11:21:52 16 us to across the product line was painful for the
11:21:58 17 relationship from his perspective.

11:22:04 18 Him launching Aperture, which was a digital
11:22:09 19 imaging product, which did compete direct -- didn't
11:22:14 20 compete directly with Adobe Photoshop, but we thought it
11:22:19 21 infringed on our franchise and hurt our partnership.

11:22:23 22 Those are the ones that stood out for me while
11:22:25 23 I was there.

11:22:27 24 Q. Did he pick up the phone and call you about all
11:22:29 25 of those things?

11:22:33 1 A. OS X, yes; Final Cut, that was me calling him.

11:22:41 2 Q. Okay.

11:22:43 3 A. And then Aperture, I think he called me to tell
11:22:46 4 me that he was introducing the product, and it didn't
11:22:50 5 compete.

11:22:52 6 Q. So when he called you, and you had these
11:22:58 7 spirited discussions, do you think he was angry from time
11:23:04 8 to time?

11:23:05 9 A. I -- I don't know. I have no way of knowing
11:23:10 10 what his feelings were. I believed that everything that
11:23:15 11 Steve did was in the best interest of Apple computer, as
11:23:24 12 I believe that everything that I did was in the best
11:23:26 13 interest of Adobe Systems. And that was the way I
11:23:29 14 approached Steve Jobs.

11:23:31 15 So I don't know whether he was angry, whether
11:23:34 16 he was sad, whether he liked me, whether he disliked me,
11:23:37 17 nor did it matter.

11:23:38 18 Q. Well, did he ever tell you that he thought you
11:23:40 19 had been untruthful to him?

11:23:45 20 A. I -- I don't recall.

11:23:46 21 Q. Did he ever tell you that he thought you were a
11:23:48 22 liar?

11:23:50 23 A. I don't recall him ever telling -- I suspect he
11:23:53 24 would have liked to tell me that, but I don't think he
11:23:57 25 ever said that.

11:23:59 1 Q. Okay.

11:23:59 2 A. At least I don't recall it.

11:24:01 3 Q. And do you recall if he ever said he couldn't
11:24:03 4 trust you anymore?

11:24:05 5 A. I don't recall him saying that.

11:24:06 6 Q. Okay. Let me just go back for a second.

11:24:13 7 When you talk -- I asked you some questions
11:24:15 8 about companies that -- that Adobe collaborated with.

11:24:20 9 Prior to the acquisition of Macromedia, did you view
11:24:25 10 Macromedia as a company that Adobe collaborated with?

11:24:30 11 A. No.

11:24:31 12 Q. Was there -- prior to the acquisition of
11:24:34 13 Macromedia by Adobe, was there a business relationship
11:24:38 14 between the two companies, licensing, products,
11:24:43 15 development agreements, that sort of thing?

11:24:45 16 A. If there was, it was because we had no choice,
11:24:47 17 but we were busy suing each other in the courts.

11:24:51 18 Q. Right. Okay. Let me switch subjects a little
11:26:19 19 bit. During the time that you were the CEO of Adobe, how
11:26:22 20 many people worked for Adobe?

11:26:25 21 A. My guess is it started out approximately 2000,
11:26:30 22 by the time I left it was approximately 7,000.

11:26:32 23 Q. How many physical locations did Adobe operate
11:26:35 24 in?

11:26:38 25 A. I -- I don't recall.

11:26:40 1 Q. Well, were there several?

11:26:41 2 A. Yes.

11:26:44 3 Q. Did Adobe operate across -- across the world?

11:26:48 4 A. Yes.

11:26:53 5 Q. Can you tell me how significant were labor
11:26:59 6 costs for Adobe?

11:27:02 7 A. Very significant.

11:27:03 8 Q. Is there some metric you -- we could use to
11:27:06 9 talk about that in terms of the budget?

11:27:08 10 A. I don't -- I don't -- I don't have specific
11:27:12 11 data that I can recall. It's certainly a -- probably
11:27:18 12 available through some of the SEC filings. I just don't
11:27:21 13 know.

11:27:22 14 Q. But would you agree with me that labor costs
11:27:24 15 were a significant part of Adobe's costs?

11:27:28 16 A. Yes.

11:27:30 17 Q. Can you identify any -- any item of cost that
11:27:34 18 was more significant at Adobe?

11:27:40 19 A. Not off the top of my head.

11:27:44 20 Q. So as you sit here today, can you give me any
11:27:46 21 sense of what percentage of Adobe's costs were labor
11:27:49 22 costs? It is a long time ago.

11:27:52 23 A. A long time ago, I forgot that P&L.

11:27:55 24 Q. Congratulations.

11:27:56 25 When you were the CEO, though, did you see that

11:27:59 1 kind of information?

11:28:00 2 A. Yes.

11:28:05 3 Q. As the CEO, did you have responsibility for
11:28:08 4 setting a budget for labor costs?

11:28:13 5 A. The way we did budgeting at Adobe was more on
11:28:17 6 the departmental side, so the -- the labor costs were the
11:28:24 7 result of how we allocated the expenditures. So I didn't
11:28:28 8 specifically say, let's allocate X percent towards labor
11:28:32 9 or towards personnel.

11:28:34 10 It was the aggregate of that that I would look
11:28:36 11 at after the business planning was done.

11:28:39 12 Q. So could you give me -- could you describe for
11:28:41 13 me what your regular role was as CEO with respect to
11:28:46 14 setting compensation levels at Adobe.

11:28:49 15 A. Yes. I set the compensation philosophy of the
11:28:53 16 company. I had to approve and wanted to approve the
11:28:58 17 total merit increases. I would review at a certain level
11:29:04 18 the merit increases by function and by title. I would
11:29:10 19 look at the external data to make sure that we were
11:29:16 20 staying within our compensation philosophy. And then I
11:29:23 21 would typically approve exceptions to our compensation
11:29:27 22 philosophy.

11:29:31 23 So if we were looking to hire somebody outside
11:29:35 24 a range or we were going to give somebody more stock
11:29:38 25 equity than what was part of our guidelines, I would

11:29:41 1 typically see them if they were at a certain level.

11:29:44 2 Q. When you say a range, what do you mean?

11:29:46 3 A. For every position, we would have a salary
11:29:50 4 range. So depending on a person's individual experience,
11:29:58 5 their role and responsibility, the job would pay
11:30:02 6 externally between X and Y according to the data we had,
11:30:06 7 and we said philosophically we wanted to pay within the X
11:30:11 8 percent and the Y percent of that range.

11:30:14 9 Q. Right.

11:30:14 10 A. And I wanted to make sure we were staying
11:30:17 11 within that relative philosophy. There were always
11:30:21 12 exceptions. Acquisitions, people who had incredible
11:30:27 13 talent that were really providing a bigger role than
11:30:30 14 their title did, so there were always exceptions. But
11:30:33 15 for the most part, I took responsibility philosophically
11:30:40 16 to comply to what I believed to be the right thing to do.

11:30:44 17 Q. Was everybody who worked at Adobe assigned a
11:30:47 18 job title?

11:30:50 19 A. I think so.

11:30:51 20 Q. And was every -- so was everybody at Adobe
11:31:00 21 assigned or put into a job title with which a salary
11:31:05 22 range was associated?

11:31:07 23 A. I think so. But the details for how that
11:31:13 24 philosophy got executed, I don't know the tactical
11:31:17 25 systems around it.

11:31:18 1 Q. Well, and I'm just trying to find out what your
11:31:20 2 involvement is in this structure and this system. Do
11:31:23 3 you -- did you have any role in, using your kind of
11:31:26 4 terminology, in setting the X and the Y of a salary
11:31:29 5 range?

11:31:30 6 A. Yes.

11:31:31 7 Q. And what was your role?

11:31:32 8 A. At a -- at a functional -- as a company-wide,
11:31:38 9 we would say, for specific functions we wanted to pay
11:31:41 10 within this range. For other functions, we were willing
11:31:44 11 to go within a different range depending on the function
11:31:47 12 of the job. I would not get involved in the details of
11:31:52 13 an individual's salary unless -- two reasons: They were
11:31:58 14 a certain level and above, some -- what we -- I think it
11:32:04 15 was either director or senior director. I forget the
11:32:07 16 titles at the time. Or if there was a proposal to do
11:32:12 17 something outside of the ranges that we had set in a
11:32:16 18 significant way.

11:32:17 19 Q. Were the ranges set based in part on market
11:32:20 20 metrics or -- or market surveys?

11:32:23 21 A. We -- we relied heavily on external data. So
11:32:26 22 it -- I don't -- I don't know which ones, but Radford
11:32:29 23 would be an example of that, the Radford data.

11:32:32 24 Q. Did you yourself review or were you presented
11:32:34 25 Radford surveys as part of your review of the

11:32:37 1 compensation?

11:32:38 2 A. At a summary level.

11:32:39 3 Q. Okay. And were there particular market targets
11:32:45 4 that Adobe used as benchmarks or guidelines for setting
11:32:49 5 salary ranges?

11:32:51 6 A. Yes.

11:32:51 7 Q. And what were they?

11:32:53 8 A. I don't know specifics, but they tended to be
11:32:56 9 software, high-tech, those that were geographically
11:33:03 10 similar to wherever the position existed.

11:33:06 11 Q. And would -- was it your practice or your
11:33:09 12 philosophy to set those salary ranges at a certain
11:33:14 13 percentage or at a certain level based on what your --
11:33:17 14 what Adobe understood the market to be, based on Radford
11:33:21 15 data or other information?

11:33:23 16 A. Yeah, if I understand your question, correctly,
11:33:25 17 yes.

11:33:26 18 Q. Okay. The -- and so from time to time did the
11:33:32 19 X and Y of a salary range change?

11:33:35 20 A. Yes. So depending on the market data -- and --
11:33:39 21 typically, it would be reviewed once a year during
11:33:42 22 planning process.

11:33:43 23 Q. And would you have a role in -- or did you
11:33:45 24 approve that on a regular basis?

11:33:49 25 Let me ask a better question.

11:33:51 1 Was it part of your job to approve changes to
11:33:54 2 those salary ranges?

11:33:57 3 A. No. I would approve the annual merit
11:34:00 4 increases. I would review the bonuses paid out to the
11:34:06 5 top percentage of the company, so it tended to be --

11:34:10 6 Q. Right.

11:34:10 7 A. -- management positions, above. I don't
11:34:13 8 believe I would look at the salary range data. I just
11:34:15 9 wanted to know that -- I relied on the HR department to
11:34:19 10 tell me they were complying with our philosophy, which
11:34:22 11 was to pay within a range, and if we -- if we were going
11:34:28 12 to move a complete function to a different range, then I
11:34:33 13 would get involved.

11:34:34 14 So, for example, if we were paying engineers in
11:34:37 15 the 40 to 60 percentile, and if there was a proposal to
11:34:46 16 start paying at a higher range, 70 to 90 percent, that
11:34:49 17 would come to my attention, I believe.

11:34:52 18 Q. Okay. But -- did Adobe, for example, use these
11:35:06 19 to set salary ranges for particular job titles or job
11:35:10 20 categories at a range that was calculated at 40 percent
11:35:13 21 or 60 percent of market?

11:35:14 22 A. I -- again, at a high level, I know what we
11:35:19 23 did. I don't know what we did for a specific position
11:35:22 24 and -- that's a level of detail I -- I -- I don't -- I
11:35:26 25 don't recall getting involved in.

11:35:28 1 Q. Okay. Fair enough. But if -- if there had
11:35:30 2 been a salary range established, and let's just say
11:35:35 3 hypothetically it was 40 percent to 60 percent of market
11:35:38 4 based -- for a particular job, like a software engineer,
11:35:45 5 if the Radford Survey data came back and said, the market
11:35:53 6 has gone up 5 percent, did you -- did you decide whether
11:36:05 7 that 40 to 60 percent would be raised 5 percent to
11:36:10 8 reflect the Radford data or market information, or was
11:36:14 9 that something that the HR compensation folks did?

11:36:16 10 MR. MITTELSTAEDT: Object to form.

11:36:19 11 THE WITNESS: Typically, the HR people would
11:36:21 12 come to me and say, we really need to move the ranges on
11:36:25 13 this based on the Radford data. Here is the Radford
11:36:28 14 data. So it would be me approving a recommendation.

11:36:33 15 Again, the philosophy of the company, which I
11:36:38 16 said, we're going to pay within this percentile for
11:36:41 17 these -- at a high level --

11:36:42 18 BY MR. SAVERI:

11:36:43 19 Q. Right.

11:36:43 20 A. -- for, you know, engineering product, we'll
11:36:45 21 pay this, for the rest of the organization we're paying
11:36:47 22 this within the Radford, so if Radford moved
11:36:51 23 automatically, the -- that would move.

11:36:53 24 Q. And that was my question, whether in order for
11:36:55 25 the compensation for any particular people who fell

11:36:58 1 within that range to move, did you have -- did you have

11:37:01 2 to validate Radford's conclusion that it moved --

11:37:04 3 A. No.

11:37:04 4 Q. -- 5 percent or that was just something --

11:37:06 5 A. That was typically -- no, with one caveat, we
11:37:10 6 also had to live within our budget. So if Radford moved
11:37:14 7 20 percent, and we can only afford to do a merit increase
11:37:19 8 for the company of 5 percent, we had to make a conscious
11:37:22 9 decision of which positions we were going to let go to
11:37:26 10 the 20 percent versus which ones we were going to keep at
11:37:30 11 2 percent. That's when I would get involved.

11:37:32 12 Q. Did that ever happen from time to time, that
11:37:33 13 the market data came back in a way that you couldn't
11:37:37 14 afford?

11:37:38 15 A. Typically not. Adobe was such a cash rich
11:37:44 16 company, expense was not my number one concern.

11:37:48 17 Q. Okay.

11:37:49 18 A. I was more concerned about revenue growth. So
11:37:51 19 I didn't -- I wasn't -- I wanted to pay in a way where we
11:37:56 20 paid fairly, where we weren't losing people, we weren't
11:38:03 21 able to attract people within appropriate fair
11:38:09 22 compensation. If somebody wanted to get rich, if it was
11:38:12 23 all about compensation, Adobe would have been a terrible
11:38:14 24 place for them to come. Because philosophically, we
11:38:19 25 weren't high payers, we weren't extreme. We didn't -- we

11:38:22 1 didn't do what some of the other companies were doing.

11:38:25 2 We wanted people to come to Adobe who were passionate

11:38:28 3 about our mission. We wanted to pay them fairly, and my

11:38:31 4 definition of "fairly" was within the Radford ranges.

11:38:35 5 Q. Well, was recruiting and retention important to

11:38:39 6 you as the CEO --

11:38:41 7 A. Yes.

11:38:41 8 Q. -- of Adobe?

11:38:43 9 A. Yes.

11:38:45 10 Q. Was it important to the business success of

11:38:48 11 Adobe?

11:38:49 12 A. Yes.

11:38:50 13 Q. Was there ever a time when recruiting and

11:38:53 14 retention was not important to the business success of

11:38:56 15 Adobe while you were CEO?

11:38:58 16 A. No.

11:38:59 17 Q. Now, was setting appropriate levels of

11:39:05 18 compensation an important component to the successful

11:39:11 19 recruiting and retention of talent at Adobe?

11:39:14 20 A. Yes.

11:39:37 21 Q. I'm going to change subjects again.

11:39:39 22 Did there come a point in time when you became

11:39:41 23 aware that the Department of Justice was investigating

11:39:44 24 Adobe's recruiting practices, in particular its agreement

11:39:49 25 with -- with Apple?

11:39:52 1 A. I think it was after I left.

11:39:54 2 Q. Okay.

11:39:55 3 A. And that's when I got a call from Adobe's
11:40:01 4 counsel.

11:40:01 5 Q. Well, just so we're clear, there is no
11:40:04 6 particular -- at least I understand that the Department
11:40:06 7 of Justice investigation began with civil investigative
11:40:11 8 demands in March of 2009.

11:40:14 9 A. I -- I left in 2007. So I was long gone.

11:40:17 10 Q. So to the best of your recollection, did you
11:40:22 11 learn about the Department of Justice investigation that
11:40:26 12 I've been discussing after you left Adobe?

11:40:29 13 A. Yes.

11:40:30 14 Q. Now, did you, in connection, though, with
11:40:33 15 Adobe's response to the Department of Justice
11:40:35 16 investigation -- were you asked to provide any
11:40:38 17 information to lawyers about discussions you had made or
11:40:46 18 discussions you'd had with Steve Jobs?

11:40:47 19 A. I was asked a number of questions, yes.

11:40:49 20 Q. Were you asked those by Adobe lawyers?

11:40:52 21 A. Adobe's counsel. Adobe's external counsel.

11:40:54 22 Q. Fair enough. Did you speak with the Department
11:41:00 23 of Justice in connection with that investigation?

11:41:05 24 A. No.

11:41:06 25 Q. So, for example, were you ever -- did you ever

11:43:40 1 just mentioned?

11:43:44 2 MR. MITTELSTAEDT: The what?

11:43:45 3 BY MR. SAVERI:

11:43:45 4 Q. The provision that you just mentioned.

11:43:48 5 Mr. Chizen, I think you just told me that in preparation
11:43:51 6 for the deposition today, you looked at some -- a section
11:43:54 7 of a larger document.

11:43:55 8 A. Yes.

11:43:56 9 Q. And my question is, does this document which
11:43:57 10 I've handed to you contain that -- the section that you
11:44:00 11 just referred to?

11:44:02 12 A. If I could go to the bathroom, first --

11:44:05 13 MR. SAVERI: Please. Let's take a break.

11:44:08 14 THE WITNESS: Yes.

11:44:14 15 THE VIDEOGRAPHER: We are now off the record at
11:44:17 16 11:44.

11:44:18 17 (Recess was taken.)

11:47:23 18 THE VIDEOGRAPHER: We are now on the record at
11:47:23 19 11:47.

11:47:25 20 BY MR. SAVERI:

11:47:26 21 Q. Let me withdraw the last question I asked and
11:47:28 22 let me ask you this question.

11:47:29 23 Do you have Exhibit 1147 in front of you?

11:47:31 24 A. Yes, I do.

11:47:32 25 Q. Did you have any role in its preparation?

11:47:38 1 A. Other than a quick conversation with Adobe's
11:47:42 2 outside legal firm on just -- in general, but not in the
11:47:51 3 preparation of this document.

11:47:52 4 Q. So did you see this -- review this document in
11:47:56 5 any fashion before it was submitted to the Department of
11:47:58 6 Justice?

11:47:59 7 A. No, I did not.

11:48:07 8 Q. I'm going to come back to that. You can put it
11:48:10 9 aside for now.

11:48:16 10 Let me hand you what has previously been marked
11:48:20 11 as Exhibit 1016 in this case. This is Apple's submission
11:48:26 12 to the Department of Justice in connection with the
11:48:30 13 Department of Justice's investigation.

11:48:32 14 The question I have for you is, have you ever
11:48:34 15 seen this before?

11:48:35 16 A. Unless it was the brief document in which I
11:48:37 17 looked at, no.

11:48:38 18 Q. Okay. Did you provide any information to any
11:48:50 19 Apple lawyers in connection with their preparation of
11:48:52 20 submission -- in the preparation of their submission to
11:48:55 21 the DOJ?

11:48:56 22 A. No, I did not.

11:48:58 23 Q. You can put that aside.

11:49:23 24 Did Apple and Adobe have an agreement that
11:49:27 25 limited the hiring of those -- of the two companies'

11:49:34 1 employees or vice versa?

11:49:36 2 A. Steve Jobs and I had a verbal understanding.

11:49:41 3 Q. Did -- did Bell Canada and Adobe have an
11:49:47 4 agreement that limited the hiring of those companies'
11:49:52 5 employees or vice versa?

11:49:55 6 A. As I now understand it, yes.

11:49:57 7 Q. Did you have any role in reaching that
11:49:58 8 agreement?

11:49:59 9 A. I -- in reaching the agreement, no; approving
11:50:01 10 them on a list, yes.

11:50:11 11 Q. Now, we talked about EFI a little bit earlier.
11:50:16 12 But let me make sure it's clear. Did Adobe have an
11:50:19 13 agreement with EFI that limited the hiring of those
11:50:22 14 companies' employees or vice versa?

11:50:25 15 A. I agreed to a non-solicitation with the CEO.

11:50:33 16 Q. And did Adobe and EMC have an agreement that
11:50:36 17 limited the hiring of those companies' employees or vice
11:50:39 18 versa?

11:50:40 19 A. I verbally agreed with the CEO not to solicit
11:50:46 20 their employees actively.

11:50:48 21 Q. Did Adobe have an agreement with Four Points
11:50:53 22 Solutions, Limited that limited the hiring of Adobe and
11:50:56 23 that company's employees?

11:50:59 24 A. If they are on the list, yes, but I'm not even
11:51:01 25 sure who they are.

11:51:02 1 Q. Did Adobe have a similar -- or strike that.

11:51:04 2 Did Adobe have an agreement with the New
11:51:07 3 Toronto Group that limited the hiring of those company's
11:51:11 4 employees or vice versa?

11:51:13 5 A. I don't know who they are, but if they are on
11:51:14 6 the list, then I -- then they did.

11:51:16 7 Q. How about Oracle, did Adobe and Oracle have an
11:51:20 8 agreement that limited the hiring of those companies'
11:51:21 9 employees?

11:51:22 10 A. Not that I'm aware of.

11:51:27 11 Q. Service Source, did Adobe and Service Source
11:51:29 12 have an agreement that limited the hiring of those
11:51:32 13 companies's employees or vice versa?

11:51:37 14 A. To the best of my knowledge, yes.

11:51:38 15 Q. How about SyncroQuest, did Adobe and
11:51:41 16 SyncroQuest have an agreement that limited the hiring of
11:51:44 17 those companies' employees?

11:51:44 18 A. I don't know who they are. But if they are on
11:51:47 19 the list, I suspect so.

11:51:48 20 Q. Okay. How about the University of
11:51:50 21 San Francisco, did Adobe and the University of
11:51:54 22 San Francisco have an agreement?

11:51:55 23 A. Not that I'm aware of.

11:51:58 24 Q. Do you know if Dr. Geschke made such an
11:52:00 25 agreement?

11:53:39 1 A. Yes.

11:53:39 2 Q. And with whom did you make it?

11:53:41 3 A. With Guy Gecht, the chief executive officer.

11:53:45 4 Q. And do you recall when you made that agreement?

11:53:47 5 A. No.

11:53:51 6 Q. And what was the agreement?

11:53:52 7 A. That we would not actively solicit his

11:53:55 8 employees.

11:53:59 9 Q. And when you say "not actively solicit" their

11:54:01 10 employees, what does that mean?

11:54:04 11 A. Our recruiters would keep them -- would not

11:54:06 12 proactively call an EFI employee to see if they were

11:54:10 13 interested in working for Adobe.

11:54:12 14 Q. Did Adobe from time to time maintain a list of

11:54:16 15 the companies with whom there were recruiting

11:54:22 16 restrictions?

11:54:23 17 A. There was one list that was put together to

11:54:25 18 clarify all the different discussions we might have had.

11:54:28 19 Q. Did that -- was that referred to as a

11:54:31 20 do-not-call list?

11:54:32 21 A. I don't know the -- I'd have to see the list to

11:54:35 22 see what it --

11:54:36 23 Q. Okay. Let me just -- let me show you what's

11:54:55 24 been marked previously as Exhibit 226.

11:55:00 25 Do you have that in front of you?

11:55:01 1 A. Yes, I do.

11:55:02 2 Q. And Exhibit 226 is a two-page document. The
11:55:11 3 first page is an email from someone named Natalie Kessler
11:55:14 4 to a number of individuals. On the back of it there is a
11:55:20 5 list that is entitled, "Talent acquisition, companies
11:55:23 6 that are off-limits, updated June 17, 2008."

11:55:28 7 Do you have that in front of you?

11:55:29 8 A. Yes, I do.

11:55:30 9 Q. Is that the list that you were referring to?

11:55:32 10 A. I was already gone at this point in time.

11:55:34 11 Q. Okay. Was there a -- do you recall a list, a
11:55:39 12 similar list having been prepared while you still were
11:55:44 13 the CEO of the company?

11:55:45 14 A. There was a similar list. I'm not sure if the
11:55:48 15 names would have been the same.

11:55:50 16 Q. Just in terms of your recollection, do you
11:55:51 17 recall a list that -- that resembled this, the way it
11:55:56 18 looked?

11:55:56 19 A. Yes, I did.

11:55:57 20 Q. And it had identified companies and some
11:56:02 21 description of the agreements.

11:56:04 22 A. Yes.

11:56:04 23 Q. Did you help prepare that list?

11:56:06 24 A. I approved the list.

11:56:08 25 Q. Who prepared the list?

11:56:14 1 A. I don't know. I'm assuming the HR department.

11:56:16 2 Q. Do you recall when that list was first

11:56:18 3 prepared?

11:56:18 4 A. No.

11:56:20 5 Q. Was it a list that was updated on a regular

11:56:23 6 basis?

11:56:25 7 A. I only recall reviewing one list once.

11:56:28 8 Q. Do you recall when you -- when that was?

11:56:30 9 A. No.

11:56:31 10 Q. And do you recall who prepared it?

11:56:34 11 A. It would have been -- it -- I don't recall who.

11:56:38 12 Q. Was it Theresa Townsley?

11:56:40 13 A. I don't -- it could have been Theresa, could

11:56:44 14 have been Donna Morris, it all depended on the timing.

11:56:46 15 It -- I would have expected it to come from the HR

11:56:49 16 organization.

11:56:49 17 Q. So is it fair to say that your recollection is

11:56:51 18 it was generated somewhere within the -- the HR

11:56:54 19 organization?

11:56:56 20 A. That would have been -- that's my expectation.

11:56:58 21 Q. And you're not sure, as you sit here today,

11:57:02 22 whether it was Theresa Townsley or Donna Morris --

11:57:06 23 A. No.

11:57:06 24 Q. -- who was the head of the -- that organization

11:57:08 25 at that time that it was prepared?

12:18:38 1 we're recruiting Ron Okamoto?

12:18:43 2 A. Not that I recall. It would surprise me if
12:18:46 3 Steve would tell me ahead of time he was recruiting
12:18:49 4 somebody.

12:18:49 5 Q. So, for example, he -- Steve Jobs didn't -- did
12:18:52 6 Steve Jobs call you and ask your permission to recruit or
12:18:55 7 hire Ron Okamoto?

12:18:57 8 A. Not that I recall.

12:18:58 9 Q. Okay. Did -- to the best of your knowledge,
12:19:02 10 did anybody at Apple talk to anybody at Adobe and ask for
12:19:06 11 permission to hire Ron Okamoto?

12:19:08 12 A. It's possible. I don't know.

12:19:09 13 Q. But you have no personal knowledge of that.

12:19:11 14 A. No personal recollection.

12:19:13 15 Q. Did -- did Jeff -- did Steve Jobs call you and
12:19:18 16 let you know that they were recruiting Susan Prescott?

12:19:21 17 A. I don't know.

12:19:22 18 Q. Did he ask you for permission to speak with
12:19:26 19 Susan Prescott?

12:19:27 20 A. I do not know.

12:19:28 21 Q. Okay. Did he ask you permission to hire Susan
12:19:31 22 Prescott?

12:19:32 23 A. I do not remember.

12:19:33 24 Q. Do you know if anybody who worked for Steve
12:19:34 25 Jobs at Apple talked to anybody at Adobe and discussed

12:19:38 1 the hiring of Susan Prescott?

12:19:39 2 A. I do not know.

12:19:43 3 Q. And do you recall whether -- whether either of
12:19:47 4 those individuals left before you reached the agreement
12:19:50 5 with Mr. Jobs?

12:19:53 6 A. I don't know.

12:19:54 7 Q. Okay.

12:19:59 8 A. This was early. When did Ron Okamoto and Susan
12:20:04 9 Prescott?

12:20:05 10 Q. It's not -- it's not altogether clear to me,
12:20:08 11 but it is, like, 2002, 2003, and the agreement was 2005.

12:20:13 12 A. Yeah.

12:20:14 13 Q. So I was just trying to get the sequence right.

12:20:17 14 MR. MITTELSTAEDT: I object as to form.

12:20:18 15 THE WITNESS: Yeah, because at least --

12:20:20 16 MR. SAVERI: I'll show you some documents. I
12:20:25 17 shouldn't have a conversation with you about that. So
12:20:26 18 let me -- let me respect that and follow the rules.

12:20:28 19 THE WITNESS: Thank you.

12:20:36 20 BY MR. SAVERI:

12:20:39 21 Q. Who first broached the subject of an agreement
12:20:42 22 regarding recruiting between Apple and Adobe?

12:20:47 23 A. I believe that would be Mr. Jobs.

12:20:48 24 Q. Okay. And can you tell me what happened. Did
12:20:53 25 he call you?

12:20:54 1 A. Yeah, I -- I don't remember. It would have
12:20:56 2 been a phone call. It was not something that was high on
12:20:59 3 my radar. When Susan and Ron left, I understood why they
12:21:03 4 were leaving, and I was -- I didn't like the fact they
12:21:06 5 were leaving, but I -- well, I understood why they were
12:21:11 6 leaving; and it was in their best interests and their
12:21:15 7 careers.

12:21:17 8 I would have never called Steve and said, let's
12:21:19 9 put an agreement in place. That would have been Steve
12:21:22 10 calling me.

12:21:23 11 Q. Okay. So was the agreement between Adobe and
12:21:32 12 Apple Steve Jobs' idea?

12:21:34 13 A. Yes.

12:21:43 14 Q. In that first phone call, what did Steve Jobs
12:21:47 15 tell you?

12:21:47 16 A. I don't remember the phone call.

12:21:49 17 Q. Okay. Do you remember there was a phone call?

12:21:53 18 A. I'm speculating that the way -- in answering
12:21:57 19 your question before, you asked me, how did Steve
12:22:00 20 approach me? I said, probably by phone, because it
12:22:03 21 wouldn't have been Steve's style to send me an email
12:22:07 22 starting with that conversation.

12:22:11 23 Q. What -- what led to that phone call?

12:22:13 24 A. I don't know. I -- I can certainly speculate.

12:22:19 25 Q. Well, tell me your best recollection.

12:22:20 1 MR. MITTELSTAEDT: Objection to form.

12:22:22 2 THE WITNESS: Speculation, not recollection; he
12:22:24 3 probably wanted to hire Ron Okamoto and Susan Prescott,
12:22:28 4 so he wanted to feel me out as to that, but I don't know.
12:22:32 5 Or maybe it was right after. I -- I don't know.

12:22:37 6 BY MR. SAVERI:

12:22:38 7 Q. So in the first conversation where the subject
12:22:40 8 of the agreement came up between you and Steve Jobs, did
12:22:45 9 you and he discuss any particular persons?

12:22:49 10 A. I don't know. I don't remember.

12:22:53 11 Q. Now, at the -- well, let me go through the
12:23:10 12 sequence. After you received the phone call from Steve
12:23:19 13 Jobs, what did you do?

12:23:26 14 MR. MITTELSTAEDT: Object to form.

12:23:27 15 THE WITNESS: I don't know. I suspect I agreed
12:23:30 16 to it.

12:23:30 17 BY MR. SAVERI:

12:23:31 18 Q. Did you -- before you agreed to it, did you
12:23:33 19 talk with anybody at Adobe?

12:23:36 20 A. I -- I don't recall.

12:23:37 21 Q. Okay. So at that time, what was Mr. Narayen's
12:23:42 22 job? Was he the president?

12:23:43 23 A. I don't know the timing of the first call, so I
12:23:47 24 don't know whether he was president, whether he was head
12:23:49 25 of engineering at that time. I -- I don't recall.

12:29:50 1 Q. Okay. So you don't recall whether he said it
12:29:55 2 was a good idea or a bad idea or he was indifferent?

12:30:00 3 A. No.

12:30:02 4 Q. And did you also speak on the telephone to
12:30:05 5 Theresa Townsley?

12:30:07 6 A. I don't know.

12:30:08 7 Q. Okay. One way or the other.

12:30:10 8 A. I just don't remember.

12:30:12 9 Q. Did you -- did you speak on the telephone with
12:30:14 10 anybody else --

12:30:15 11 A. I don't remember.

12:30:16 12 Q. -- at Adobe?

12:30:17 13 A. I don't remember.

12:30:18 14 Q. Okay. Did you talk with any of the lawyers?

12:30:20 15 A. That would be attorney-client privilege.

12:30:22 16 Q. Well, I'm just asking whether you talked with
12:30:24 17 an attorney at Adobe after you received the email.

12:30:28 18 A. I always speak to the attorneys at Adobe.

12:30:32 19 MR. MITTELSTAEDT: I'm going to instruct him
12:30:33 20 not to answer, move to strike the answer on the grounds
12:30:36 21 of attorney-client privilege.

12:30:38 22 BY MR. SAVERI:

12:30:45 23 Q. Let me make sure the record is clear about
12:30:47 24 this.

12:30:48 25 After you received the email from Mr. Jobs, did

12:30:52 1 you consult with Adobe in-house attorneys?

12:30:55 2 A. I didn't --

12:30:56 3 MR. MITTELSTAEDT: Just a second. I instruct
12:30:57 4 you not to answer. Attorney-client privilege.

12:30:59 5 MR. SAVERI: That's fine.

12:31:00 6 THE WITNESS: Okay.

12:31:00 7 BY MR. SAVERI:

12:31:14 8 Q. After you received the email from Steve Jobs,
12:31:17 9 did you speak to anybody else at Adobe?

12:31:21 10 A. I do not recall who I spoke with.

12:31:23 11 Q. Okay. Did you ever speak with Dr. Warnock or
12:31:27 12 Dr. Geschke about this agreement after you had received
12:31:30 13 the email from Steve Jobs?

12:31:32 14 A. If I did, I don't remember.

12:31:33 15 Q. Okay. What happened next? After you spoke
12:31:41 16 with Mr. Narayen, did you communicate again with Mr. Jobs
12:31:46 17 about this?

12:31:46 18 A. There was a series of emails that I reviewed,
12:31:52 19 and that was the discussion I had with him, the email
12:31:55 20 discussion back and forth.

12:31:57 21 Q. Did you communicate orally with Steve Jobs
12:32:04 22 about the agreement after you received the email from --

12:32:08 23 A. I don't remember.

12:32:11 24 Q. How many telephone calls or conversations do
12:32:14 25 you recall having with Steve Jobs about this subject in

12:32:18 1 2005?

12:32:19 2 A. I don't know.

12:32:21 3 Q. I think you said you remember there was --

12:32:23 4 there was one.

12:32:24 5 A. There was -- I said -- it was not 2005. I said

12:32:30 6 there was a -- we had a verbal agreement.

12:32:32 7 Q. Okay.

12:32:33 8 A. Sometime prior to the email exchange. I do not

12:32:35 9 recall when that was --

12:32:37 10 Q. Okay.

12:32:37 11 A. -- and the form in which it took place.

12:32:40 12 Q. Okay. And so when -- there was a point in 2005

12:32:43 13 when you received an email from Steve Jobs.

12:32:46 14 A. That's correct.

12:32:47 15 Q. And -- that referred to the --

12:32:51 16 A. Agreement we had.

12:32:53 17 Q. Did -- did you at that time have any telephone

12:32:57 18 conversations with Steve Jobs?

12:32:59 19 A. I might have. But I don't remember.

12:33:01 20 Q. And as you sit here today, do you recall

12:33:03 21 whether it was one or more or anything about --

12:33:07 22 A. I don't recall any, but there could have been a

12:33:10 23 phone call. I tried to forget the phone calls with Steve

12:33:16 24 Jobs.

12:33:23 25 MR. MITTELSTAEDT: Let the record reflect

12:33:24 1 laughter.

12:33:26 2 MR. SAVERI: And some -- some modicum of mirth.

12:33:30 3 Okay.

12:33:40 4 MR. MITTELSTAEDT: I'm told the food is here,
12:33:41 5 whenever you want to break.

12:33:43 6 MR. SAVERI: Let me just do a couple of other
12:33:44 7 things, and then we'll take a break.

12:33:46 8 THE WITNESS: Yes.

12:33:46 9 BY MR. SAVERI:

12:33:54 10 Q. Did the agreement that you reached with Steve
12:33:56 11 Jobs provide that neither company would recruit or
12:34:00 12 solicit each other's employees?

12:34:04 13 A. Would actively, proactively recruit or solicit.

12:34:10 14 Q. And was the agreement mutual?

12:34:16 15 A. That was my understanding.

12:34:18 16 Q. And did the agreement that you reached apply to
12:34:21 17 all employees at Adobe and Apple?

12:34:27 18 A. The email communication clarified what we
12:34:31 19 agreed to, which was all employees at Apple and Adobe.

12:34:36 20 Q. Regardless of job title, function, role, or
12:34:39 21 salary?

12:34:40 22 A. That was my understanding of what I agreed to.

12:34:42 23 Q. And it was not limited to any particular
12:34:44 24 projects on which Adobe and Apple were collaborating.

12:34:48 25 A. That is correct.

12:34:50 1 Q. And the agreement wasn't limited by geography.

12:34:53 2 A. That is correct.

12:34:54 3 Q. And therefore applied to both companies'

12:34:57 4 worldwide operations in total?

12:35:01 5 A. That was my understanding in my agreement with

12:35:03 6 Steve.

12:35:04 7 Q. And to your knowledge, did that agreement that

12:35:05 8 you reached with Steve Jobs have any time limitation?

12:35:14 9 A. It was, we agreed, and that was the extent of

12:35:17 10 the conversation.

12:35:17 11 Q. And so that agreement -- strike that.

12:35:32 12 Who did you tell at Adobe about the agreement

12:35:35 13 you reached?

12:35:38 14 A. At a minimum Shantanu Narayen and head of HR.

12:35:42 15 Q. Okay. Anybody else that you recall?

12:35:43 16 A. I don't recall.

12:35:54 17 Q. Well, is there anybody else that you recall

12:35:57 18 communicating it to, either by name or by job title or

12:36:00 19 description?

12:36:01 20 A. No.

12:36:02 21 Q. Okay. Did you tell, for example, the people

12:36:10 22 who were collaborating with Apple?

12:36:12 23 A. I -- I don't remember.

12:36:14 24 Q. Well, did you broadly disseminate or inform

12:36:33 25 people at Adobe of the agreement you reached with Steve

12:36:36 1 Jobs?

12:36:40 2 A. I didn't keep it a secret. I'm not sure what
12:36:46 3 the definition of the word "broad" is. I would tell
12:36:49 4 whoever asked me, do we have an agreement with Apple not
12:36:52 5 to proactively solicit employees, and vice versa, and I
12:36:56 6 would be very open and upfront about it.

12:36:59 7 Q. So if someone asked you about it, you -- you'd
12:37:01 8 give them the correct information.

12:37:03 9 A. That's correct.

12:37:03 10 Q. But if they didn't ask you, you didn't provide
12:37:06 11 that information.

12:37:07 12 A. I didn't send out a broad communication, if
12:37:10 13 that's what you're asking.

12:37:12 14 Q. That's right. But you did inform at least the
12:37:14 15 top of the HR organization --

12:37:16 16 A. Yes.

12:37:16 17 Q. -- at the company?

12:37:17 18 A. And it's -- yes, I did, and it's possible they
12:37:20 19 did a broad communication.

12:37:21 20 Q. Well, did you -- you informed the person who
12:37:26 21 was at the top of the HR operation in order that she,
12:37:30 22 because it was either she --

12:37:31 23 A. Both shes.

12:37:32 24 Q. -- both shes, so that -- because in order that
12:37:33 25 she would know about the agreement, correct?

13:08:42 1 on or about May 31st --

13:08:45 2 A. I do not know.

13:08:45 3 Q. -- 2005?

13:08:46 4 A. I just do not know.

13:08:52 5 Q. Well, do you recall a meeting that you attended
13:08:55 6 with Shantanu Narayen with Steve Jobs and others at
13:08:59 7 Apple's offices, and with Mr. Schiller, Mr. Okamoto on or
13:09:09 8 about this time?

13:09:11 9 A. I remember a meeting with Shantanu, Steve Jobs
13:09:15 10 where Steve Jobs did not want Shantanu in the meeting.
13:09:19 11 That's the only meeting I recall over at Apple's
13:09:22 12 facilities with Shantanu, but there could have been
13:09:26 13 others. I just don't know which meetings Shantanu
13:09:30 14 attended at their location.

13:09:32 15 Q. Did -- okay. Let me ask a couple questions
13:09:34 16 about that.

13:09:35 17 Do you recall a meeting -- well, first, why
13:09:38 18 didn't Jobs want Mr. Narayen to attend?

13:09:42 19 A. A lot of times he would want to show me some
13:09:44 20 proprietary things, and he didn't have a relationship
13:09:47 21 with Shantanu, and he wanted to keep it as exclusive and
13:09:51 22 restricted as possible.

13:09:52 23 Q. Did you meet with Ron Okamoto and Phil Schiller
13:09:59 24 and Steve Jobs at Apple's facilities on or about this
13:10:03 25 time? Do you have a --

13:10:04 1 A. I don't recall.

13:10:05 2 Q. Do you recall a meeting -- an in-person meeting
13:10:13 3 on or about this time where the subject of recruiting was
13:10:19 4 discussed?

13:10:19 5 A. I don't recall.

13:10:29 6 Q. Now, in May of 2005, were there particular
13:10:38 7 collaborations or projects between Apple and Adobe that
13:10:42 8 were significant?

13:10:47 9 A. I don't have the slightest idea.

13:10:53 10 Q. How many -- how many -- strike that.
13:10:56 11 Was it a relatively rare event for you to go
13:10:59 12 visit Steve Jobs at -- at Apple?

13:11:03 13 A. No.

13:11:03 14 (Exhibit 1804 was marked for identification.)

13:11:04 15 BY MR. SAVERI:

13:11:23 16 Q. Let me show you Exhibit 1804, which is another
13:11:27 17 email. This one has the Bates number 231APPLE100128.
13:11:37 18 This is another Apple document, but it refers to a June 2
13:11:40 19 meeting with you and Mr. Narayen listed as Adobe
13:11:47 20 attendees, and the Apple attendees that are listed are
13:11:51 21 Steve, Phil, I guess that is Phil Schiller, and Ron
13:11:54 22 Okamoto. Do you see that?

13:11:56 23 A. Yes.

13:11:56 24 Q. Did that meeting happen?

13:11:59 25 A. I don't know.

13:12:00 1 Q. Okay. We'll put that aside.

13:12:36 2 I've handed you what has been previously marked
13:12:38 3 as Exhibit 224. Will you take a moment to review that,
13:12:45 4 please.

13:13:13 5 A. Okay.

13:13:14 6 MR. MITTELSTAEDT: Wait. There is writing on
13:13:15 7 the back, too.

13:13:16 8 THE WITNESS: Oh. Thank you. Hang on a
13:13:46 9 second. So this is not -- oh, I see. Okay.

13:13:51 10 BY MR. SAVERI:

13:13:52 11 Q. Have you had a chance to review it?

13:13:53 12 A. Yes, I have.

13:13:55 13 Q. First, let me draw your attention to the top of
13:13:58 14 the very first page. Do you see that?

13:13:59 15 A. Yes.

13:14:12 16 Q. The top of the first page appears to be an
13:14:14 17 email from you to Shantanu Narayen and Theresa Townsley
13:14:20 18 dated May 27, 2005. Do you see that?

13:14:23 19 A. Yes.

13:14:24 20 Q. Let me ask you first. Did you write the -- did
13:14:29 21 you write this email to Mr. Narayen and Theresa Townsley
13:14:33 22 on or about the date that's indicated here, May 27, 2005?

13:14:38 23 A. It appears that I did.

13:14:39 24 Q. Okay. Now, let me just kind of take you
13:14:47 25 through this chronologically, so that means we start at

13:18:11 1 you were the CEO at Adobe?

13:18:13 2 A. I think so.

13:18:13 3 Q. Did you have any other email address that you
13:18:15 4 used for business?

13:18:16 5 A. I don't believe so.

13:18:17 6 Q. Do you recognize Steve Jobs' email address?

13:18:19 7 A. Yes.

13:18:19 8 Q. And was that the email address you used to
13:18:22 9 communicate with him via email?

13:18:24 10 A. Yes.

13:18:24 11 Q. Okay. Now, if you look at Exhibit 223, it
13:18:30 12 looks like the first time you appear in this chain of
13:18:34 13 communication is the email from Mr. Jobs to you, which is
13:18:38 14 at the bottom of the first page, dated May 26, 2005, at
13:18:42 15 9:36 a.m. Do you see that?

13:18:46 16 A. Yes.

13:18:50 17 Q. Now, let me read it to you. He writes,
13:18:52 18 "Bruce," that is you, right?

13:18:54 19 A. That is me.

13:18:54 20 Q. Okay. "Adobe is recruiting from Apple.
13:18:57 21 They've hired one person already and are calling lots
13:19:00 22 more. I have a standing policy with our recruiters that
13:19:04 23 we don't recruit from Adobe. Seems you have a different
13:19:08 24 policy. One of us must change our policy. Please let us
13:19:12 25 know who. Steve."

13:19:15 1 And then he writes, "Here is one of the many
13:19:17 2 pings we've gotten from Adobe." If you turn over to the
13:19:21 3 next page, it looks like he at that point is attaching
13:19:25 4 something from somebody named Jerry Sastri to somebody
13:19:29 5 named bereskin@apple. Are you with me?

13:19:34 6 A. Yeah, I see it.

13:19:35 7 Q. So let me ask you first, the email from
13:19:37 8 Mr. Jobs to you on May 26, 2005, was that the first email
13:19:40 9 communication you received from him regarding the
13:19:49 10 recruiting policy or recruiting policy agreement between
13:19:56 11 Adobe and Apple?

13:19:57 12 A. No. As you can see in the above sentence, I
13:20:00 13 talk about what I thought we agreed to previously.

13:20:04 14 Q. Okay. So it's your recollection that -- that
13:20:08 15 there was another email communication that preceded this.

13:20:12 16 A. Not necessarily email. A communication which
13:20:16 17 could have been verbal.

13:20:18 18 Q. Okay. So just so I'm clear, it's your
13:20:21 19 recollection that there was a communication between you
13:20:23 20 and Mr. Jobs about this subject.

13:20:26 21 A. About which subject?

13:20:27 22 Q. About the -- was there a communication -- prior
13:20:30 23 to May 26, 2005, Thursday, 9:36 a.m., did you communicate
13:20:36 24 with Mr. Jobs regarding an agreement between Apple and
13:20:43 25 Adobe not to recruit each others employees?

13:20:47 1 A. I believe so, yes.

13:20:49 2 Q. And as you sit here today, do you recall
13:20:51 3 whether that communication, that prior communication, was
13:20:54 4 oral, by telephone, or in writing?

13:20:58 5 A. It was probably oral.

13:21:00 6 Q. Okay. And just so I can try to place it, do
13:21:02 7 you recall how -- by how much -- let me ask a better
13:21:07 8 question.

13:21:08 9 Do you recall when that communication was, now
13:21:11 10 that you've had a chance to look at this?

13:21:13 11 A. It was -- it was probably right prior to when
13:21:19 12 Ron Okamoto and then Susan Prescott left, because I
13:21:22 13 remember how angry I was that he had recruited them,
13:21:27 14 which I felt violated at the time, because I thought we
13:21:31 15 had an agreement in place. So I suspect it was right
13:21:34 16 prior to that time whenever that was.

13:21:40 17 Q. Okay. Now, do you know who Jerry Sastri is?

13:21:51 18 A. No.

13:21:55 19 Q. At this time, did you know that there were
13:21:59 20 folks at Apple -- excuse me -- that there were folks at
13:22:02 21 Adobe recruiting into Apple?

13:22:06 22 A. I wasn't aware of it. I wasn't aware of it,
13:22:10 23 nor did I care.

13:22:11 24 Q. Okay. Well, but my question was whether you
13:22:13 25 were aware of that.

13:22:14 1 A. I was not aware of it one way or the other.

13:22:18 2 Q. And it looks like from the prior communication
13:22:21 3 that Theresa Townsley was the head of HR at the time.

13:22:26 4 A. Yes.

13:22:26 5 Q. Did -- prior to this communication with
13:22:28 6 Mr. Jobs, did Theresa Townsley ever advise you that there
13:22:31 7 were people in her organization that were recruiting into
13:22:34 8 Apple?

13:22:35 9 A. It's possible.

13:22:36 10 Q. But my question is, do you have any
13:22:38 11 recollection?

13:22:39 12 A. I have no recollection.

13:22:40 13 Q. Okay. So focusing on Exhibit 223 again, when
13:22:47 14 you received the email from -- from Mr. Jobs on May 26th,
13:22:50 15 at 9:36 in the morning, when you received that email,
13:23:03 16 what did you do?

13:23:03 17 A. The first thing I did was to think about how am
13:23:05 18 I going to placate this guy and get him off my back so he
13:23:13 19 doesn't call me again.

13:23:15 20 Q. Okay.

13:23:15 21 A. That was the first thing.

13:23:16 22 Q. Did you come up with a plan for accomplishing
13:23:19 23 that?

13:23:23 24 A. I probably had a discussion with Shantanu
13:23:27 25 and/or Theresa about it.

14:14:07 1 Narayan or Theresa Townsley tell you that they supported
14:14:11 2 the proposal that you had made to Steve Jobs which was a
14:14:14 3 more limited agreement that had to do only with the more
14:14:19 4 senior folks?

14:14:25 5 A. Based on what Theresa -- based on Theresa
14:14:34 6 Townsley's email to Shantanu and myself, it sounded like
14:14:38 7 Shantanu was in complete agreement with me of no active
14:14:41 8 soliciting of any employee.

14:14:43 9 Q. Okay.

14:14:45 10 A. With a heads-up on senior level approaching
14:14:48 11 either company.

14:14:49 12 Q. So Shantanu wrote to you, and then shortly
14:14:52 13 thereafter -- well, not shortly thereafter, later in the
14:15:06 14 day on the 27th, Theresa Townsley writes back to you, and
14:15:09 15 writes, "Just to clarify, are you both saying not to
14:15:13 16 solicit any employees at any level?" Right?

14:15:15 17 A. Right. Yes.

14:15:15 18 Q. I won't read the -- okay. Then she writes,
14:15:22 19 "Also, what is the agreement between you, Bruce, and
14:15:25 20 Steve if Apple employees come to us directly? This is
14:15:28 21 where I thought you two agreed that you would give each
14:15:30 22 other a call if they were at the senior level." Do you
14:15:34 23 see that?

14:15:35 24 A. Yes.

14:15:35 25 Q. At this time had you reached an agreement with

14:15:37 1 Apple, or Steve Jobs in particular, to do that, that is
14:15:41 2 that you would give each other a call if the -- the
14:15:45 3 recruited employees were at the senior level?

14:15:49 4 A. Yes. I don't think neither one of us thought
14:15:51 5 through or discussed the details of what that would look
14:15:54 6 like.

14:15:54 7 Q. Okay. But your answer was yes?

14:15:57 8 A. Yes. Yes.

14:15:58 9 Q. Okay. Now, then, at 8:52 p.m. you wrote back
14:16:04 10 Theresa Townsley and Shantanu Narayen, "No active
14:16:07 11 soliciting of any employees, heads up on senior level
14:16:10 12 approaching either company." Do you see that?

14:16:12 13 A. Yes.

14:16:13 14 Q. Okay. And so that was your understanding of
14:16:19 15 what -- well, does that email accurately record what
14:16:25 16 you --

14:16:27 17 A. And Steve agreed to.

14:16:29 18 Q. Yes. Now, Shantanu then writes back and says,
14:16:38 19 "I agree," at 8:56. Do you see that?

14:16:43 20 A. Yes.

14:16:43 21 Q. Now, let's go to Exhibit 223. Are you with me?

14:16:51 22 A. Yes.

14:16:51 23 Q. Up at the top of -- on the first page, there is
14:16:55 24 an email that you wrote to Steve Jobs. Do you see that?

14:16:58 25 A. Yes.

14:16:59 1 Q. And if the date stamps are correct, you wrote
14:17:02 2 that on Friday, May 27th, 2005, at approximately 8:53 in
14:17:07 3 the evening.

14:17:08 4 A. Correct.

14:17:09 5 Q. Okay. And you write, "I'd rather agree not to
14:17:12 6 actively solicit any employee from either company. If
14:17:15 7 employee proactively approaches then it's acceptable. If
14:17:19 8 you are in agreement, I will let my folks know."

14:17:22 9 Did you write that?

14:17:22 10 A. Yes.

14:17:23 11 Q. Is that an accurately -- well, does that
14:17:26 12 indicate your assent to that agreement?

14:17:28 13 A. Yes.

14:17:28 14 Q. Okay. Now, if you flip to Exhibit 224 --

14:17:37 15 A. I'm with you.

14:17:37 16 Q. -- do you recall if you had received Shantanu's
14:17:41 17 email to you before you had gotten back to Steve? And I
14:17:45 18 ask that because the time stamp indicates it is slightly
14:17:48 19 later.

14:17:49 20 A. I don't know.

14:17:51 21 Q. Okay. Now, going to Exhibit 223, which was
14:18:04 22 your -- which concludes with your email to Steve Jobs, do
14:18:08 23 you see that?

14:18:08 24 A. Yes.

14:18:09 25 Q. Did he respond in writing to that?

14:18:13 1 A. If he did, it should have been on the server.

14:18:17 2 Q. Okay.

14:18:19 3 A. But I don't know.

14:18:20 4 Q. Well --

14:18:24 5 A. I don't know.

14:18:25 6 Q. Okay. Now, going back to Exhibit 223, there

14:18:38 7 are some additional communications between you,

14:18:40 8 yourself -- I mean you, Shantanu Narayen and Theresa

14:18:44 9 Townsley. Do you see that?

14:18:45 10 A. Yes.

14:18:46 11 Q. Okay. First Theresa Townsley writes, "And if

14:18:56 12 an Adobe employee refers" --

14:18:57 13 MR. MITTELSTAEDT: Excuse me. 224?

14:18:58 14 BY MR. SAVERI:

14:18:59 15 Q. Excuse me. Exhibit 224, thank you.

14:19:01 16 Theresa writes, "And if an Adobe employee

14:19:04 17 refers an Apple employee through a referral program, are

14:19:07 18 you doing -- are you okay with that?" Do you see that?

14:19:10 19 A. Yes.

14:19:11 20 Q. And then -- and then Shantanu says, "I think

14:19:13 21 the spirit has to be that we don't initiate contact with

14:19:17 22 Apple employees even through our employees. If an Adobe

14:19:21 23 employee is approached by an Apple employee, I think it's

14:19:24 24 okay to pass it on." Do you see that?

14:19:26 25 A. Yes.

14:28:35 1 Q. Now, Exhibit 1805 is a document that Adobe
14:28:38 2 produced, it has the Bates number Adobe_00853 to 854.
14:28:43 3 I'd like to take -- I'd like you to take a moment to read
14:28:48 4 it. I'm really go to just ask you to focus in particular
14:28:51 5 on the part of the email that begins in the -- towards
14:28:53 6 the bottom of the first page, which is the -- the email
14:28:57 7 from owner E-Team to E-Team, and the attached email from
14:29:03 8 Theresa Townsley to Donna Morris, Mr. Narayen, yourself,
14:29:08 9 and Gloria Stinson. But please take a moment to look at
14:29:13 10 the email.

14:29:31 11 A. Okay.

14:29:32 12 Q. Okay. So first, the email from Theresa
14:29:35 13 Townsley to Donna Morris, Friday, May 27th, 2005, which
14:29:40 14 is at the bottom of the email, is the email that you
14:29:43 15 edited before sending it to Steve Jobs, correct?

14:29:45 16 A. It looks that way, yes.

14:29:47 17 Q. Is the email that is at the bottom of this
14:29:49 18 document the full and complete email that you received
14:29:51 19 from Theresa Townsley, to the --

14:29:54 20 A. To the best of my knowledge --

14:29:55 21 Q. -- best of your recollection?

14:29:55 22 A. -- yes.

14:29:56 23 Q. And now, Theresa Townsley writes, "Bruce and
14:30:22 24 Steve Jobs are in agreement that we are not to solicit
14:30:24 25 ANY," all caps, "Apple employees and vice versa." Do you

14:30:28 1 see that?

14:30:29 2 A. Yes.

14:30:30 3 Q. Does that correctly summarize the agreement you
14:30:32 4 described to them?

14:30:32 5 A. Yes.

14:30:33 6 Q. And then it also says, "It is okay if they come
14:30:35 7 to us through our referral program." That -- does that
14:30:37 8 refer to the referral program you discussed a few minutes
14:30:40 9 ago?

14:30:40 10 A. That is correct.

14:30:41 11 Q. And then she goes on to say, "However, if it
14:30:44 12 looks like we have an Apple employee as a candidate for a
14:30:47 13 senior role at Adobe, director and VP, we need to let
14:30:52 14 Bruce know so he can talk to Steve." Does that last
14:30:55 15 sentence accurately describe --

14:30:56 16 A. Yes.

14:30:56 17 Q. -- the agreement that you had with Steve?

14:30:58 18 A. Yes.

14:30:59 19 Q. Now, the -- the -- that email is attached by --
14:31:04 20 it look like Shantanu Narayen to the E-Team. Do you see
14:31:09 21 that?

14:31:10 22 A. Yes.

14:31:11 23 Q. And did you receive that email from him --

14:31:16 24 A. I was on the -- the E-Team email alias. I
14:31:20 25 would have received it, yes.

14:31:33 1 Q. Was that email the first time that the entire
14:31:36 2 E-Team was informed of the agreement you had reached with
14:31:40 3 Jobs?

14:31:40 4 A. I don't know, given that my E-Team meetings
14:31:43 5 tended to be on Monday mornings, and this all transpired
14:31:47 6 at the end of the previous week, I could speculate that
14:31:50 7 this was the first communication. But I don't know.

14:31:53 8 Q. Okay. Did you subsequently follow up with your
14:32:08 9 own email and correct anything about the way Shantanu
14:32:12 10 Narayen described the agreement?

14:32:14 11 A. Not that I recall.

14:32:22 12 Q. Now, subsequent to that email, if you look at
14:32:24 13 this document, there is a series of emails between Donna
14:32:27 14 Morris, Theresa Townsley, Gloria Stinson, and Jeff
14:32:31 15 Vijungco. Do you see that?

14:32:32 16 A. Yes.

14:32:33 17 Q. Did you talk to any of these folks over the
14:32:34 18 weekend about their reactions to the agreement or any
14:32:37 19 steps they were taking to enforce it?

14:32:39 20 A. I don't believe so.

14:33:26 21 Q. As of this time, were you aware that Adobe was
14:33:28 22 in discussions with someone named Frank Casanova from
14:33:32 23 Apple?

14:33:33 24 A. As of which time?

14:33:34 25 Q. As of this time, May of 2005.

14:33:37 1 A. I -- I have vague memories of the name. I have
14:33:41 2 no idea where the name comes from, who he worked for, who
14:33:45 3 was recruiting him. I don't remember.

14:33:47 4 Q. Well, prior to May of 2005, did you have any
14:33:49 5 discussions with Steve Jobs about Adobe's efforts to hire
14:33:54 6 Frank Casanova?

14:33:56 7 A. Not that I remember or recall.

14:33:58 8 Q. For example, did Steve Jobs call you or send
14:34:01 9 you an email telling you, "stop it," or --

14:34:04 10 A. Not --

14:34:05 11 Q. -- or complaining about Frank -- what you were
14:34:06 12 doing with Frank Casanova?

14:34:08 13 A. Not that I recall.

14:34:21 14 Q. Did Adobe cease its efforts to recruit Frank
14:34:27 15 Casanova after you reached the agreement with Steve Jobs?

14:34:32 16 A. I don't remember who Frank Casanova is. I
14:34:35 17 don't recall who he is. I don't recall his situation.
14:34:39 18 So by no means can I answer that question.

14:34:41 19 Q. Okay. Subsequent to your agreement with Steve
14:34:57 20 Jobs, did you receive confirmation that you recall from
14:35:04 21 Theresa Townsley, Donna Morris, or anybody in that
14:35:07 22 organization that they had ceased their efforts with
14:35:10 23 respect to recruiting of Apple employees?

14:35:14 24 A. Are you talking about other than what's stated
14:35:16 25 in documents --

14:35:18 1 Q. Correct.

14:35:18 2 A. -- that you've already presented?

14:35:20 3 Q. Yeah.

14:35:20 4 A. Not that I recall.

14:35:21 5 Q. So for example, did it come up at an E-Team

14:35:24 6 meeting?

14:35:24 7 A. If it did, I don't recall it.

14:35:35 8 Q. Were there notes taken at E-Team meetings? Let

14:35:37 9 me ask a better question.

14:35:39 10 Were there minutes of E-Team meetings prepared?

14:35:41 11 A. There was a period of time where my assistant

14:35:44 12 would take notes of E-Team meetings.

14:35:47 13 Q. Okay. Do you know if this -- that period of

14:35:50 14 time included the period of time that --

14:35:54 15 A. I do not remember.

14:35:55 16 Q. Okay. I've handed you what has been previously

14:36:26 17 marked as Exhibit 230. Will you take a moment to review

14:36:34 18 that, please.

14:36:53 19 A. I've read it.

14:36:54 20 Q. Now, have you ever seen -- well, this document

14:37:00 21 appears to be an email from Jeff Vijungco to an email

14:37:09 22 distribution list or alias called "hire@adobe.com." Do

14:37:13 23 you see that?

14:37:14 24 A. Yes.

14:37:15 25 Q. Were you part of that alias or that list?

14:37:17 1 A. No.

14:37:17 2 Q. Okay. Now, this is dated Tuesday, May 21st,
14:37:23 3 2005. Do you see that?

14:37:24 4 A. Yes.

14:37:24 5 Q. And he writes --

14:37:27 6 MR. MITTELSTAEDT: May 31st.

14:37:29 7 MR. SAVERI: May 31st. Excuse me.

14:37:30 8 BY MR. SAVERI:

14:37:31 9 Q. "Hi, all, in recent discussions between our
14:37:34 10 E-Team and Apple's E-Team, the topic of recruiting one
14:37:38 11 another came up. Given our relationship with Apple, and
14:37:39 12 assuming our partnership may grow stronger, we have
14:37:43 13 reiterated the importance of not poaching from Apple
14:37:46 14 directly. Accordingly, this is increasingly more
14:37:49 15 sensitive for candidates at the director to VP level."

14:37:53 16 Do you see that?

14:37:54 17 A. Yes.

14:38:00 18 Q. Now, did Adobe's E-Team and Apple's E-Team
14:38:11 19 discuss this subject at this time, to the best of your
14:38:13 20 recollection?

14:38:13 21 A. I don't believe, other than Mr. Jobs and
14:38:16 22 myself, there was not a discussion between Adobe and
14:38:19 23 Apple regarding this matter.

14:38:22 24 Q. Okay.

14:38:22 25 A. During this time period.

14:38:23 1 Q. So you believe Mr. Vijungco is being inaccurate
14:38:29 2 when he talks about recent discussions between Adobe's
14:38:35 3 E-Team and Apple's E-Team?

14:38:38 4 A. Inaccurate?

14:38:39 5 Q. Inaccurate, yes.

14:38:40 6 A. Inaccurate.

14:38:43 7 Q. Did you tell Mr. Vijungco to send this email
14:38:46 8 describing the -- the agreement?

14:38:49 9 A. I do not believe so.

14:38:51 10 Q. Okay. Do you know if -- do you know if someone
14:38:57 11 else on the E-Team, for example, anybody that was
14:39:02 12 responsible for the HR function, instructed Mr. Vijungco
14:39:05 13 to send this?

14:39:06 14 A. I do not know.

14:39:08 15 Q. Do you know why he inaccurately described the
14:39:11 16 genesis of the agreement between you and Mr. Jobs?

14:39:16 17 A. I don't have the slightest idea.

14:39:19 18 Q. Okay. Did you tell him or anybody else at
14:39:22 19 Adobe to conceal that?

14:39:26 20 A. No.

14:39:27 21 Q. Okay. Did -- well, did you want the agreement
14:39:39 22 known outside of the HR department that was responsible
14:39:45 23 for enforcing the agreement?

14:39:47 24 A. I didn't care.

14:39:49 25 Q. You didn't care one way or the other.

14:39:51 1 A. I didn't care one way or the other. All I
14:39:53 2 wanted was to placate Steve.

14:39:57 3 Q. Well, you did care about following your
14:40:05 4 agreement with Mr. Jobs, didn't you?

14:40:07 5 A. I cared about him believing I was following the
14:40:11 6 agreement, not necessarily following the agreement.

14:40:14 7 Q. Okay. But if he learned that you were not
14:40:17 8 following the agreement, you expected to hear about it,
14:40:20 9 didn't you?

14:40:21 10 A. As long as I didn't know about it, and it came
14:40:28 11 to my attention afterwards, I was comfortable with him
14:40:31 12 finding out, because I could take the same tactic that he
14:40:35 13 would take with me, which is, I'll look into it and have
14:40:39 14 it stopped immediately.

14:40:40 15 Q. So if -- if you didn't -- you were comfortable
14:40:45 16 with maintaining a position of plausible deniability with
14:40:52 17 respect to this if Mr. Jobs subsequently found out about
14:40:55 18 it and you didn't know anything about what was going on?

14:40:59 19 A. To Mr. Jobs, yes.

14:41:14 20 Q. But you did expect and knew that if Mr. Jobs
14:41:18 21 did find out about it -- find out that Adobe was not
14:41:19 22 living up to its agreement, that you would hear about it
14:41:22 23 from him?

14:41:22 24 A. If he found out about it, yes.

14:41:25 25 Q. Was it your belief that he was particularly

14:41:29 1 sensitive to this issue?

14:41:33 2 A. It was always difficult to figure out what he
14:41:35 3 was particularly sensitive to on any given day or time.

14:41:38 4 Q. But -- but based on your communications with
14:41:40 5 him, the recruiting of talent from -- by other technology
14:41:45 6 companies away from Apple was something that he cared a
14:41:48 7 lot about. You knew that, didn't you?

14:41:50 8 A. Again, he was sensitive about many, many
14:41:53 9 topics, and it would vary on any given date and time. So
14:41:57 10 I can't tell you what he was overly sensitive to or not.
14:42:02 11 During that time period, between Wednesday, Thursday,
14:42:06 12 when he got the email, he reacted and responded -- and --
14:42:09 13 and contacted me, and you've seen the subsequent
14:42:14 14 communications between the two of us.

14:42:17 15 Whether that was a hot button for him or not, I
14:42:19 16 don't know.

14:42:20 17 Q. Well, was there ever a time that you can
14:42:23 18 remember where Steve Jobs was insensitive to other
14:42:26 19 companies' recruiting Apple folks away from Apple?

14:42:31 20 MR. MITTELSTAEDT: Object to form.

14:42:33 21 THE WITNESS: I don't know how to answer that
14:42:34 22 question. So can you try repeating it? I don't
14:42:39 23 understand it.

14:42:41 24 BY MR. SAVERI:

14:42:48 25 Q. Well, did you know that Steve Jobs believed

15:51:50 1 you to Jobs. Do you see that?

15:51:51 2 A. Yes.

15:51:52 3 Q. Did you write that to Mr. Jobs on or about the
15:51:53 4 date that's indicated here?

15:51:55 5 A. I assume so.

15:51:56 6 Q. Now, when you wrote to Mr. Jobs, you forwarded
15:52:04 7 an email that you had received from someone named Nabil
15:52:08 8 Hireche.

15:52:08 9 A. Hireche, yes.

15:52:11 10 Q. What was that -- is Nabil a man or a woman?

15:52:15 11 A. A man.

15:52:17 12 Q. What was Nabil Hireche's job at this time?

15:52:24 13 A. I don't know.

15:52:25 14 Q. Okay. Now, you forwarded to Jobs the email
15:52:30 15 that you received from Mr. Hireche. Do you see that?

15:52:33 16 A. Yes.

15:52:33 17 Q. And he writes about someone named D'Apra, or
15:52:38 18 "D'Apra." Do you see that?

15:52:40 19 A. Yes.

15:52:41 20 Q. And at this time in 2006 had the -- has the
15:52:46 21 acquisition of Macromedia closed?

15:52:50 22 A. I believe so.

15:52:51 23 Q. Okay. So at this time, if -- at this time the
15:52:57 24 Macromedia folks had been absorbed into Adobe, right? So
15:53:02 25 this person, Alessandro D'Apra was an employee of Adobe

15:53:08 1 at this time, right?

15:53:09 2 A. Assuming my dates are correct, yes.

15:53:11 3 Q. So did you understand that your agreement with
15:53:12 4 Jobs with respect to recruiting, if followed, applied to
15:53:19 5 people like Mr. D'Apra who worked in Italy?

15:53:23 6 A. I believe that the verbal agreement I had with
15:53:26 7 Steve applied to any Adobe employee, regardless of where
15:53:29 8 they came from.

15:53:30 9 Q. And so when you wrote to him and said, "Please
15:53:33 10 remind your folks of our arrangement," were you asking
15:53:38 11 him to follow the agreement he had reached with you?

15:53:42 12 A. Yes.

15:53:46 13 Q. Did you ever speak to him -- I'm sorry.

15:53:49 14 Did you ever speak on the telephone with Jobs
15:53:52 15 about this?

15:53:52 16 A. Not that I recall.

15:53:53 17 Q. Did he write back, do you recall?

15:53:54 18 A. Unless you have the email.

15:53:55 19 Q. I do not.

15:53:56 20 A. Then I do not believe he wrote back.

15:53:58 21 Q. Okay. I'm changing subjects. So I'm happy to
15:54:05 22 keep going forward or take a break.

15:54:07 23 A. Keep going.

15:54:08 24 Q. Okay. I don't -- frankly, I don't recall
15:54:26 25 whether I gave you another copy of this previously. But

15:54:29 1 this is Exhibit 1147, which is the white paper.

15:54:34 2 MR. MITTELSTAEDT: You did. We've been over
15:54:36 3 this.

15:54:43 4 MR. SAVERI: Well, okay. I've shown it to him.
15:54:44 5 I've got some more questions about it.

15:54:46 6 MR. MITTELSTAEDT: It is 1147.

15:54:47 7 MR. SAVERI: It still is. So either one you
15:54:48 8 want to use. I just had an extra copy of it.

15:54:51 9 MR. MITTELSTAEDT: Okay.

15:54:52 10 BY MR. SAVERI:

15:54:53 11 Q. I have some particular questions about some of
15:54:55 12 the -- the factual statements in here. Let me draw your
15:55:14 13 attention to the first -- bottom of the first page.

15:55:16 14 There is a footnote here that says, "We note," and
15:55:18 15 this -- again, this was submitted by Adobe, okay?

15:55:21 16 "We note, however, that the extent to which
15:55:23 17 this arrangement was filed has ebbed and flowed with the
15:55:29 18 company's relationship over time."

15:55:31 19 And, again, let me just make sure you have the
15:55:36 20 full context in mind. If you look at the second
15:55:39 21 paragraph that begins, "As we describe below," do you see
15:55:42 22 that?

15:55:43 23 A. Yes.

15:55:43 24 Q. It says, "As we describe below, the Adobe/Apple
15:55:46 25 non-solicitation agreement flowed from and furthered a

16:05:42 1 A. I do not know.

16:05:43 2 Q. Okay. There is a reference in this paragraph

16:05:48 3 to something called Adobe's Illustrator product.

16:05:51 4 Do you see that?

16:05:52 5 A. Yes.

16:05:52 6 Q. Do you know when that was introduced?

16:05:55 7 A. I'd be guessing.

16:05:56 8 Q. Was it before you got to the company?

16:05:57 9 A. Yes.

16:05:58 10 Q. Was it long before you came to the company?

16:05:59 11 A. There was a product called Adobe Illustrator

16:06:03 12 88, based on 1988, so I'm assuming, yes.

16:06:07 13 Q. Now, there is also a reference to Photoshop.

16:06:10 14 A. Yes.

16:06:10 15 Q. That is another Adobe product?

16:06:12 16 A. It was acquired before I got there.

16:06:14 17 Q. Do you recall when?

16:06:15 18 A. No, but all of this information is available on

16:06:27 19 Google.

16:06:28 20 Q. On the next page there is a reference to Mac OS

16:06:30 21 X. Do you see that?

16:06:32 22 A. Yes.

16:06:32 23 Q. When was Mac OS X introduced?

16:06:35 24 A. I don't know, but it was during my time frame.

16:06:44 25 Q. Now, on the next page, on page 7, there is a

16:06:46 1 paragraph that begins, "All told." Do you see that?

16:06:50 2 A. On -- this page.

16:06:51 3 Q. Page 7.

16:06:52 4 A. Yes.

16:06:53 5 Q. It says, "Adobe and Apple" -- it says, "All

16:06:58 6 told, Adobe and Apple have executed over 200 cooperative

16:07:02 7 agreements." Do you see that?

16:07:04 8 A. Yes.

16:07:04 9 Q. Do you know if the subject of recruiting each

16:07:07 10 other's employees came up in the negotiation of any of

16:07:10 11 those agreements?

16:07:12 12 A. I do not know, and I didn't realize that Adobe

16:07:16 13 even had that many written agreements with Apple.

16:07:19 14 Q. Well, do you know whether or not this statement

16:07:22 15 in fact is true or not?

16:07:24 16 A. I would have no way of knowing.

16:07:28 17 Q. Did you negotiate yourself any of those

16:07:30 18 agreements?

16:07:30 19 A. I don't believe I negotiated any written

16:07:33 20 agreement between myself and Apple.

16:07:36 21 Q. And do you know if any of those written

16:07:38 22 agreements say anything about recruiting?

16:07:41 23 A. I do not know.

16:07:47 24 Q. Now --

16:07:48 25 A. Other than what we talked about previously,

16:07:50 1 which was I think I looked at a document that showed a
16:07:53 2 paragraph in an earlier Adobe agreement.

16:07:56 3 Q. Now, a little bit farther down in this -- on
16:07:58 4 this page -- let me -- let me just focus you. There is a
16:08:04 5 paragraph that begins, "At times." Do you see that?

16:08:07 6 A. Yes.

16:08:07 7 Q. Then it says, "The relationship temporarily
16:08:09 8 cooled when Steve Jobs left Apple and the company briefly
16:08:14 9 joined forces with Microsoft during the infamous font
16:08:18 10 wars." Do you see that?

16:08:19 11 A. Yes.

16:08:20 12 Q. What were the font wars?

16:08:22 13 A. Hard for me to describe, since I wasn't there
16:08:23 14 at the time.

16:08:24 15 Q. Do you know when the font wars began?

16:08:26 16 A. Before I got there.

16:08:27 17 Q. Did they end before you got there?

16:08:29 18 A. Yes.

16:08:37 19 MR. SAVERI: Let's take a break.

16:08:39 20 THE VIDEOGRAPHER: This is the end of Video
16:08:39 21 No. 3. We are now off the record at 4:08.

16:19:04 22 (Recess was taken.)

16:19:27 23 THE VIDEOGRAPHER: We are now on the record at
16:19:28 24 4:19. This is the beginning of Video No. 4.

16:19:32 25 MR. MITTELSTAEDT: I'm going to designate the

16:28:36 1 Q. Are you familiar with term "vaporware"?

16:28:39 2 A. I am familiar with the term "vaporware."

16:28:39 3 Q. What do you understand the term "vaporware" to
16:28:40 4 mean?

16:28:41 5 A. The way I interpret the term "vaporware" is
16:28:43 6 something that gets announced but is not ready for market
16:28:46 7 availability, and never becomes available.

16:28:50 8 Q. Do you recall a Microsoft -- in connection with
16:28:52 9 the government case against Microsoft being accused of
16:28:56 10 adopting a -- a business practice of vaporware in order
16:29:00 11 to protect its monopoly?

16:29:02 12 A. If you could refresh my memory.

16:29:04 13 Q. Well, are you aware that Microsoft was accused
16:29:08 14 by the government of announcing products before they were
16:29:11 15 ready in order to foreclose competition and disadvantage
16:29:16 16 competitors?

16:29:16 17 A. Yes, I do recall that.

16:29:18 18 Q. Now, did -- while you were at Adobe --

16:29:27 19 A. Yes.

16:29:28 20 Q. -- did Adobe ever announce a product before the
16:29:31 21 product existed?

16:29:36 22 A. Probably.

16:29:38 23 Q. Were any of those products that Adobe and Apple
16:29:42 24 collaborated on?

16:29:46 25 A. We might have announced the OS X versions of

16:29:52 1 our applications to help our customers understand that we
16:29:55 2 were actually working on them. We also showed a version
16:29:58 3 of InDesign before it was available in the marketplace at
16:30:02 4 the Mac World Exposition.

16:30:16 5 Q. Now, this goes on to say, "The ATM announcement
16:30:20 6 could be interpreted as an offensive move to try to
16:30:23 7 dissuade Apple from going a separate route with different
16:30:27 8 display technologies."

16:30:28 9 Do you see that?

16:30:29 10 A. I see that.

16:30:29 11 Q. Did Apple announce ATM before the product
16:30:32 12 existed in order to try and dissuade Apple from going a
16:30:35 13 separate route with different display technology?

16:30:38 14 A. I wasn't with the company. I wasn't aware of
16:30:40 15 what Adobe or Apple's intent was at the time.

16:30:51 16 Q. From your perspective, as the CEO of Adobe --

16:30:56 17 A. Yes.

16:30:57 18 Q. -- when did the font wars end?

16:30:59 19 A. Before I became the CEO of Adobe.

16:31:06 20 Q. When did Apple and Adobe start to squabble
16:31:11 21 about the implementation of Flash on Apple devices?

16:31:23 22 A. I believe it was after my departure from Adobe
16:31:30 23 Systems.

16:31:32 24 Q. So just so I am clear, to the best of your
16:31:34 25 recollection, the squabbling or friction between Apple

16:31:38 1 and Adobe about the implementation of Flash on Apple
16:31:42 2 devices, including their -- their computers or their
16:31:48 3 hand-helds, hand-held devices, occurred after you left
16:31:54 4 Adobe?

16:31:54 5 A. It depends on what your definition is of
16:31:56 6 "squabble." We worked with Apple to encourage them to
16:32:00 7 implement Flash on their iPhone. I'm not sure that was
16:32:06 8 squabble or --

16:32:06 9 Q. That's fair.

16:32:08 10 A. So -- and at the time Apple believed that Flash
16:32:11 11 was not of the size and performance that they really
16:32:14 12 needed for the iPhone. Adobe didn't like that decision.
16:32:18 13 I certainly didn't like that decision. But it was their
16:32:21 14 choice.

16:32:21 15 Q. But you were the CEO of the company when that
16:32:23 16 happened.

16:32:24 17 A. That is correct.

16:32:25 18 Q. Now, did you discuss that with Jobs --

16:32:28 19 A. I probably did.

16:32:29 20 Q. -- yourself?

16:32:30 21 A. Yes.

16:32:30 22 Q. And what -- when did you discuss that with
16:32:32 23 Jobs?

16:32:34 24 A. I don't know.

16:32:35 25 Q. Okay. Did you --

16:32:41 1 A. It was after the Macromedia acquisition and
16:32:44 2 before November 2007 -- or -- and before November 2007.

16:32:49 3 Q. Did you communicate with Mr. Jobs about that
16:32:52 4 subject?

16:32:53 5 A. About Flash?

16:32:54 6 Q. Yes.

16:32:54 7 A. Yes.

16:32:55 8 Q. On many occasions?

16:32:57 9 A. I'm not sure if it was many occasions.

16:32:59 10 Q. On more than one?

16:33:02 11 A. At least one, I feel comfortable saying.

16:33:05 12 Q. Is there a particular one that you have in
16:33:06 13 mind?

16:33:10 14 A. I called him up and asked him why he wasn't
16:33:13 15 interested in implementing Flash.

16:33:15 16 Q. And when was that?

16:33:17 17 A. Sometime between the post acquisition of
16:33:19 18 Macromedia and before November 2007.

16:33:23 19 Q. And what did he tell you?

16:33:25 20 A. He didn't really like the performance he wasn't
16:33:29 21 able to get. And I offered to help. And he didn't take
16:33:33 22 up -- take us up on the help.

16:33:37 23 Q. Did you communicate with him via email or in
16:33:40 24 writing about that subject subsequent to that telephone
16:33:44 25 conversation?

16:33:45 1 A. I don't know if I communicated with him. There
16:33:48 2 were certainly communications within Adobe, the email
16:33:52 3 about what Steve had said or what Apple's opinion is.

16:33:55 4 Q. During this period of time, was there a
16:33:57 5 particular person at Adobe who was responsible for
16:34:00 6 developing the Flash product?

16:34:04 7 A. There were a group of people. I don't know who
16:34:08 8 in retrospect. It could have been a combination of Digby
16:34:12 9 Horner, Kevin Lynch, and others, but I'm not sure.

16:34:15 10 Q. Okay.

16:34:16 11 A. Al Ramadan, who headed up the mobile stuff.

16:34:19 12 Q. I'm sorry. Your voice kind of trails off.

16:34:21 13 A. Oh, I'm sorry.

16:34:21 14 Q. Could you identify the people that you would --

16:34:23 15 A. I don't know who was specifically responsible
16:34:25 16 for it. It would have been either, or the likes of, a
16:34:31 17 Digby Horner, Kevin Lynch, and/or Al Ramadan and the
16:34:36 18 people within their organizations.

16:34:38 19 Q. Okay. Did they have -- communicate with
16:34:44 20 counterparts at Apple?

16:34:48 21 A. There were people at Adobe that communicated
16:34:50 22 with counterparts at Apple, yes.

16:34:52 23 Q. And so I'm just trying to get a sense of
16:34:55 24 whether the communication between the two entities, Apple
16:34:58 25 and Adobe, about that subject, was a communication

16:55:26 1 A. I don't know.

16:55:27 2 Q. So in terms of the development and the -- these

16:55:29 3 code names, do you recall Jaguar preceded Tiger?

16:55:33 4 A. There's lots of big cats. I don't know.

16:55:36 5 Q. Okay. So do you know, as you sit here today,

16:55:40 6 whether Tiger was version 10.4 of OS X?

16:55:43 7 A. I have no idea.

16:55:43 8 Q. Or whether Jaguar was version 10.2?

16:55:47 9 A. I have no idea. But I'm sure you could find

16:55:50 10 all this information available elsewhere.

16:55:52 11 Q. Now, there is an email from someone named

16:55:54 12 Bertrand -- I don't even know how to pronounce his name,

16:55:57 13 Serlet?

16:55:59 14 A. Yes.

16:55:59 15 Q. Do you know that person?

16:56:00 16 A. I've met him a number of times, yes.

16:56:02 17 Q. Okay. Did he work on the collaboration between

16:56:05 18 Adobe and Apple?

16:56:06 19 A. I don't know if he worked directly on the

16:56:08 20 collaboration, but he was responsible, I believe, for a

16:56:10 21 lot of the software engineering at Apple.

16:56:13 22 Q. Now, you see his email, dated February 1, 2005,

16:56:17 23 that begins, "Yes, Christine's team is working in concert

16:56:20 24 with Ryan"?

16:56:22 25 A. I see it.

16:56:24 1 Q. And then it refers to a Jaguar crisis.

16:56:29 2 Do you see that?

16:56:29 3 A. I see that.

16:56:30 4 Q. Do you know what he's referring to?

16:56:32 5 A. I have no idea.

16:56:33 6 Q. Were there particular problems between Apple

16:56:35 7 and Adobe with respect to the development of Jaguar or --

16:56:39 8 or versions of OS X at this time?

16:56:42 9 A. There were always challenges in developing

16:56:45 10 software for any operating system in my 20, 30-plus-year

16:56:50 11 experience in the software business.

16:56:52 12 Q. Well, was there a particular big one with

16:56:54 13 respect to Jaguar?

16:56:55 14 A. I don't remember when Jaguar was, so I'm not

16:56:58 15 sure which version it was, whether it was the first

16:57:01 16 version or the second version.

16:57:03 17 Q. Well, you -- you write this email on

16:57:07 18 February 17th, 2005, to Jobs following up on a Tiger

16:57:14 19 compatibility report. Do you see that?

16:57:17 20 A. I see that.

16:57:18 21 Q. Was that usual? I mean did you regularly

16:57:20 22 follow up directly with Steve Jobs about compatibility

16:57:24 23 reports with respect to OS X versions?

16:57:26 24 A. Anytime I had good news on something that

16:57:28 25 concerned Steve I liked to pass it on to him so he would

16:57:31 1 believe that we were collaborating and cooperating to
16:57:34 2 maintain the support that we needed.

16:57:40 3 Q. Now, at the top of the email, Schiller writes
16:57:44 4 to Bertrand. Do you see that?

16:57:47 5 A. I see that.

16:57:47 6 Q. And he says, "I'll add it was a fight with
16:57:49 7 Adobe to get this relationship to this state. It was
16:57:52 8 much harder than with Panther."

16:57:55 9 Do you see that?

16:57:55 10 A. I see that.

16:57:56 11 Q. Do you know what he's talking about?

16:57:57 12 A. No, because I don't remember what version of
16:57:59 13 the operating system was Panther or which one was Tiger
16:58:03 14 and which one was Jaguar. So without understanding that,
16:58:07 15 I really -- it is hard for me to put this in context.

16:58:11 16 Q. Now, he refers to someone named Bryan Lamkin.
16:58:14 17 Do you see that?

16:58:15 18 A. Yes, I do see that.

16:58:17 19 Q. What was Bryan Lamkin's job at this time at
16:58:20 20 Adobe?

16:58:20 21 A. I believe he was a senior vice president in one
16:58:23 22 of our product groups.

16:58:24 23 Q. Did he work with Ron Okamoto with respect to
16:58:28 24 Apple, Adobe?

16:58:29 25 A. Ron Okamoto worked for him when Ron Okamoto was

16:58:32 1 with Adobe.

16:58:33 2 Q. Did Lamkin work with Okamoto after Okamoto went
16:58:37 3 to work for Apple?

16:58:38 4 A. Based on this email, I would assume so.

16:58:41 5 Q. Okay. And do you know whether either Lamkin or
16:58:47 6 Okamoto said to Apple, as indicated here, in no uncertain
16:58:54 7 terms that we, that is Apple, are now, quote, like
16:58:57 8 Microsoft to them, that is Adobe, and they trust our OS
16:59:01 9 team less this year than last? Do you know if that was
16:59:06 10 said to these individuals at Apple by people who reported
16:59:09 11 to you at Adobe?

16:59:10 12 A. I don't know if they said it.

16:59:13 13 Q. Well, do you know if that was true?

16:59:17 14 A. I have heard -- I heard people at Adobe say
16:59:20 15 that. But I don't know if they particularly said it and
16:59:24 16 who they said it to.

16:59:25 17 Q. So even though -- whether that thought or
16:59:29 18 belief expressed internally was communicated to the folks
16:59:33 19 at Apple.

16:59:34 20 A. I do not know.

16:59:35 21 Q. Did you ever discuss that with Jobs?

16:59:37 22 A. No.

16:59:54 23 MR. MITTELSTAEDT: By my count -- we've got
16:59:56 24 until -- we've got about until 5:36. And it is 5:02 now.

17:00:05 25 MR. SAVERI: Let's go off the record.

17:30:38 1 MR. SAVERI: I have just one follow-up
17:30:39 2 question.

17:30:39 3

17:30:39 4 FURTHER EXAMINATION

17:30:39 5 BY MR. SAVERI:

17:30:40 6 Q. With respect to the 2005 collaborations that
17:30:43 7 Mr. Mittelstaedt was just asking you about, can you
17:30:45 8 identify any of them which you would identify as
17:30:48 9 "significant" that were in place at the time of the 2005
17:30:53 10 discussions with you and Jobs?

17:30:54 11 A. If you were able to provide me with the
17:30:57 12 different operating system changes and the different
17:31:00 13 hardware changes that Apple was embarking on, and the
17:31:04 14 different product upgrades that Adobe was embarking on at
17:31:08 15 that point in time, I'm sure I could identify numerous
17:31:10 16 significant collaborations that were going on. But
17:31:12 17 unless I'm able to identify those, I can't do so.

17:31:16 18 MR. SAVERI: Okay. I don't have any
17:31:17 19 questions -- I don't have any further questions. Thank
17:31:19 20 you very much for your time.

17:31:20 21 THE WITNESS: You're welcome.

17:31:22 22 THE VIDEOGRAPHER: This is the end of Video 4
17:31:23 23 of 4 and concludes today's proceedings. The master
17:31:26 24 videos will be retained by Jordan Media. We are now off
17:31:29 25 the record. The time is 5:31.

16:51:38 1 (The deposition ended at 5:31 p.m.)

16:51:38 2 * * *

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16:51:38 5 BRUCE CHIZEN

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16:41:10 1 I, Rosalie A. Kramm, Certified Shorthand
 16:41:10 2 Reporter licensed in the State of California, License No.
 16:41:10 3 5469, hereby certify that the deponent was by me first
 16:41:10 4 duly sworn and the foregoing testimony was reported by me
 16:41:10 5 and was thereafter transcribed with computer-aided
 16:41:10 6 transcription; that the foregoing is a full, complete,
 16:41:10 7 and true record of said proceedings.

16:41:10 8 I further certify that I am not of counsel or
 16:41:10 9 attorney for either of any of the parties in the
 16:41:10 10 foregoing proceeding and caption named or in any way
 16:41:10 11 interested in the outcome of the cause in said caption.

16:41:10 12 The dismantling, unsealing, or unbinding of the
 16:41:10 13 original transcript will render the reporter's
 16:41:10 14 certificates null and void.

16:41:10 15 In witness whereof, I have hereunto set my hand
 16:41:10 16 this day: March 26, 2013.

16:41:10 17 X Reading and Signing was requested.

16:41:10 18 Reading and Signing was waived.

16:41:10 19 Reading and signing was not requested.

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16:41:10 22

 ROSALIE A. KRAMM

16:41:10 23

CSR 5469, RPR, CRR

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